STATE OF MICHIGAN

COURT OF APPEALS

JAMES HUNT,

Plaintiff-Appellee and
Cross-Appellant,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellant and
Cross-Appellee,

and

AMERICAN COMMERCIAL LIABILITY INSURANCE COMPANY
and ALLSTATE INSURANCE COMPANY,

Defendants-Appellees and
Cross-Appellees.

May 8, 1990

FOR PUBLICATION

No. 108948

CITIZENS INSURANCE COMPANY,

Plaintiff-Appellant,

v

AMERICAN COMMERCIAL LIABILITY INSURANCE COMPANY
and ALLSTATE INSURANCE COMPANY,

Defendants-Appellees.

Nos. 113313; 113846

Before: Doctoroff, P.J., and Shepherd and McDonald, JJ.

PER CURIAM.

In this consolidated appeal, defendant Citizens Insurance Company (Citizens), the assignee of the Assigned Claims Facility, appeals as of right the orders of the Wayne Circuit Court which granted summary disposition to codefendants American Commercial Liability Insurance Company (ACLIC) and Allstate Insurance Company (Allstate), and which also required Citizens to pay benefits to claimant James Hunt (Case No. 108948). In that same appeal, Hunt cross-appeals the trial court's grant of summary disposition to ACLIC and Allstate. In Nos. 113313 and 113846, Citizens appeals as of right the subsequent grant of summary disposition to ACLIC and Allstate in Citizens' action for reimbursement. We reverse as to ACLIC, affirm as to Allstate, and remand for an order consistent with this opinion.

The facts of the underlying accident are not in dispute. On January 10, 1986, claimant Hunt walked to the corner of Linwood and Virginia Park in Detroit, where his friend Sibia McGowan's car had stopped. Hunt had the car keys in his hand and his left hand on the car door when he was struck by another vehicle. A police report named Dorothy Catching as the driver of the hit and run vehicle which was owned by Willie Catching and insured by Allstate. ACLIC was the no-fault insurer of McGowan's vehicle. On the day of the accident, Hunt did not own a vehicle, nor did any member of his household own a vehicle.

On January 6, 1987, Hunt initiated an action against the Assigned Claims Facility. On January 9, 1987, Hunt amended his complaint to add ACLIC and, on February 2, 1988, Hunt added Allstate. Hunt alleged that both ACLIC and Allstate refused to pay benefits. Citizens paid benefits to Hunt and filed an action for reimbursement. The trial court found that, because Hunt was only preparing to enter the vehicle, ACLIC was not liable for benefits and Citizens was not entitled to reimbursement from ACLIC. The trial court also found that, because Allstate had not timely received notice of the accident as required by the statute, it was not liable for benefits and that Citizens was not entitled to reimbursement from Allstate.

Citizens and Hunt claim that the trial court erred in finding that Hunt was only preparing to enter the vehicle. We agree.

In order to recover no-fault benefits for injuries sustained in connection with a parked vehicle, a claimant must suffer injuries falling within one of the categories enumerated in § 3106 of the No-Fault Act, MCL 500.3101 et seq.; MSA 24.13101 et seq. King v Aetna Casualty, 118 Mich App 648, 650; 325 NW2d 528 (1982). That section provides in pertinent part:

> (1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:
>
> * * *
>
> (c) . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

In King, this Court held that a claimant who slipped and fell on the ice while reaching to unlock his car door was only preparing the enter the vehicle. However, in Teman v Transamerica Ins Co, 123 Mich App 262, 265; 333 NW2d 244 (1983), this Court held that a claimant who had has foot on the back ledge of a truck while attempting to open the door to enter was in the process of entering into the vehicle.

While the line between King and Teman is admittedly a fine one, we conclude that this case, where claimant had car keys in his hand and his left hand on the car door, is similar to Teman and that Hunt was in the process of entering into the vehicle. Further, we conclude that being struck by another vehicle is foreseeably identifiable with the act of entering a vehicle which is parked in the street. There is a sufficient causal nexus between the use of the motor vehicle and the injury so that the injuries arose out of the ownership, operation, maintenance of use of a parked vehicle as required by MCL 500.3105(1); MSA 24.13105(1). Gooden v Transamerica Ins Corp of America, 166 Mich App 793, 797; 420 NW2d 877 (1988), lv den 431 Mich 862 (1988); Teman, p 266; King, p 651.

MCL 500.3115(1)(a); MSA 24.13115(1)(a), governs priority for nonoccupants. Cason v Auto Owners, 181 Mich App 600, 606; ___ NW2d ___ (1989). That provision states in pertinent part:

> [A] person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following priority:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident.

Under the No-Fault Act, a vehicle which falls within one of the parked vehicle exceptions of MCL 500.3106; MSA 24.13106, is "involved in the accident." Childs v American Ins Co, 177 Mich App 589, 592; 443 NW2d 173 (1989), lv den 433 Mich 897 (1989). Because we conclude that claimant Hunt was injured while entering McGowan's vehicle, ACLIC, the insurer of that vehicle, is liable for Hunt's personal protection insurance benefits.

Under the No-Fault Act, the Assigned Claims Facility is essentially an insurer of last priority. Cason, p 610; MCL 500.3172; MSA 24.13172. A person entitled to no-fault benefits may obtain them

through an assigned claims plan if no personal protection insurance is applicable to the injury. Parks v DAIIE, 426 Mich 191, 210; 393 NW2d 833 (1986); MCL 500.3172(1); MSA 24.13172(1).

It follows from our analysis of ACLIC's liability that Citizens is entitled to reimbursement from ACLIC. MCL 500.3172(3)(f); MSA 24.13172(3)(f). We emphasize that ACLIC is liable because Hunt was actually in contact with the vehicle and, thus, was not merely preparing to enter the vehicle.

Addressing Allstate's liability, Citizens and Hunt argue that, even though Allstate was not named as defendant within the one year limitation period of the No-Fault Act, because Hunt's claim naming the Assigned Claims Facility was filed within one year, the statute was tolled as to Allstate. We disagree.

The one year statute of limitations of the No-Fault Act is found in MCL 500.3145(1); MSA 24.13145(1), which states in pertinent part:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.

This Court has expressly held that when an action is commenced against one party, the § 3145 statute of limitations is not tolled as to other potential parties who may not have been named as defendants in the suit. Taulbee v Mosley, 127 Mich App 45, 47–48; 338 NW2d 547 (1983). The fact that Hunt, in the exercise of due diligence, could not or did not identify Allstate as the appropriate insurer is not enough to toll the statute of limitations as to Allstate. Pendergast v American Fidelity Fire Ins Co, 118 Mich App 838, 841–843; 325 NW2d 602 (1982). Finally, Hunt has not alleged any of the disabilities which would toll the statute of limitations pursuant to MCL 600.5851; MSA 27A.5851. Hence, the trial court correctly granted summary disposition to Allstate.

Reversed in part, affirmed in part and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ John H. Shepherd
/s/ Gary R. McDonald