0900.

STATE OF MICHIGAN

COURT OF APPEALS

BARBARA WILSKI,

Plaintiff-Appellant,

v

STANDARD FIRE INSURANCE COMPANY,
a Connecticut corporation,

Defendant-Appellee.

January 16, 1991

No. 117718

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's granting of summary disposition to defendant on plaintiff's claim for no-fault personal protection insurance benefits. We affirm.

The facts in this case are undisputed. On June 28, 1988, plaintiff was riding a horse around the inside of a barn when a car drove by the opening to the barn and allegedly frightened her horse. Plaintiff was thrown from the horse and sustained injuries. She later filed a claim with defendant for no-fault benefits but defendant denied the claim. Plaintiff then instituted this action seeking those benefits. The trial court, however, granted summary disposition to defendant.

As defendant's motion was granted pursuant to MCR 2.116(C)(8), which tests the legal sufficiency of a claim by the pleadings alone, we accept as true all plaintiff's factual allegations. Formall, Inc v Community National Bank, 166 Mich App 772, 777; 421 NW2d 289 (1988). Mere conclusions, however, unsupported by allegations of fact upon which they may be based, will not suffice to state a cause of action. NuVision v Dunscombe, 163 Mich App 674, 681; 415 NW2d 234 (1988), lv den 430 Mich 875 (1988). A motion brought under MCR 2.116(C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify the right of recovery. Scameheorn v Bucks, 167 Mich App 302, 306; 421 NW2d 918 (1988), lv den 430 Mich 886 (1988).

Pursuant to MCL 500.3105(1); MSA 24.13105(1), a no-fault insurer "is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle ...." In applying this statutory standard for finding a causal connection between motor vehicle and injury, we are guided by Thornton v Allstate Insurance Co, 425 Mich 643, 659-660; 391 NW2d 320 (1986):

> In drafting MCL 500.3105(1); MSA 24.13105(1), the Legislature limited no-fault PIP benefits to injuries arising out of the use of a motor vehicle as a motor vehicle." In our view, this language shows that the Legislature was aware of the causation dispute and chose to provide coverage only where the causal connection between the injury and the use of a motor vehicle as a motor vehicle was more than incidental, fortuitous, or "but for." The involvement of the car in the injury should be "directly related to its character as a motor vehicle." Miller v Auto-Owners, supra [411 Mich 633; 309 NW2d 544 (1981)]. Therefore, the first consideration under MCL 500.3105(1); MSA 14.13105(1), must be the relationship between the injury and the vehicular use of a motor vehicle. Without a relation that is more than "but for," incidental, or fortuitous, there can be no recovery of PIP benefits. [Emphasis in original.]

In the case at bar, the trial court found that the operation of a motor vehicle here was too tenuously related to the injury to allow recovery of no-fault benefits. We agree. Even assuming, as we must, that plaintiff's horse was frightened by the car passing by, the causal connection between the use of a motor vehicle as a motor vehicle and the injury was merely incidental and fortuitous. It was not the nature of the vehicle as a motor vehicle which caused plaintiff's injury, but rather, the apparently loud noise it made that frightened the horse which, in turn, bucked and threw plaintiff to the ground. Any number of things could have frightened the horse. The fact that it was a car driving by was merely coincidental. We do not believe the Legislature intended the no-fault act to be extended this far and find that the trial court did not err in granting summary disposition to defendant.

Affirmed.

/s/ John H. Shepherd
/s/ David H. Sawyer

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McDONALD, J. (dissenting).

I respectfully dissent. Plaintiff's factual allegations, which must be accepted as true, see Formall, Inc v Community Nat'l Bank of Pontiac, 166 Mich App 772; 421 NW2d 289, were sufficient to establish a claim for no-fault benefits. Applying the standard announced in Thornton v Allstate Ins Co, 425 Mich 643; 391 NW2d 320 (1986), the relationship between the injury and the vehicular use of the automobile was more than "but for," incidental or fortuitous. See Jones v Tronex Chemical Corp, 129 Mich App 188; 341 NW2d 469 (1983). There was a causal connection between the automobile and the injury, so it is irrelevant that there was no physical contact with either plaintiff or the horse on which she was riding. Greater Flint HMO v Allstate Ins Co, 172 Mich App 783; 432 NW2d 439 (1988).

I would reverse.

/s/Gary R. McDonald