STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

OP-768-5

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Subrogee of THOMAS TAYLOR,

Plaintiff-Appellant,

File No. 91-42316-AZ

vs

Hon. Donald E. Shelton

RONDA COKER,

Defendant-Appellee.

OPINION AND ORDER REVERSING AND REMANDING

At a session of said Court held
in the County of Washtenaw, State
of Michigan, on April 24, 1992

This appeal poses the interesting question of whether the No-Fault Act abolishes an at-fault driver's tort liability for property damages where the driver fails to maintain the insurance required by the no-fault law. The district court held that it did, except to the extent of the $400 allowed by the "mini-tort" section of the statute.

Defendant Coker was admittedly uninsured when her vehicle struck the vehicle belonging to Thomas Taylor. The district court finding that Coker was negligent, and that Taylor was not, is unchallenged on appeal. Taylor

maintained collision coverage on his vehicle from Plaintiff State Farm, which paid $10,021.07 for the repairs to the Taylor vehicle. State Farm brought suit as Taylor's subrogee to recover the repair costs. The district court, however, limited plaintiff's recovery to $400 and entered judgment in that amount. State Farm appealed.

The relevant part of the No-Fault Act, MCL 500.3135, provides as follows:

> **(1) A person remains subject to *tort liability for non-economic loss* caused by his or her ownership maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.**
>
> **(2) Notwithstanding any other provision of law, *tort liability* arising from the ownership, maintenance or use within this state of a motor vehicle *with respect to which the security required by section 3101(3) and (4) was in effect* is abolished except as to:**
>
> . . .
>
> **(d) Damages up to $400.00 to motor vehicles, to the extent that the damages are not covered by insurance. An action for damages pursuant to this subdivision shall be conducted in compliance with subsection (3).**

Plaintiff argues that the literal interpretation of section (2) is that tort liability is abolished only for those people who carry no-fault insurance and that an uninsured driver remains liable for all of the damages which she causes with her motor vehicle.

The Court is convinced that there is no controlling case law which is directly on point. Dicta from three Supreme Court cases, however, seems to support plaintiff's basic position. In *Auto Club Ins. Ass'n v. Hill*, 431 Mich

439 (1988), the court held that, without regard to the precondition of insurance contained in section (2), section (1) abolished everyone's tort liability for noneconomic losses which did not meet the injury threshold in that section. Therefore, the divided Supreme Court held, an uninsured motorist escapes liability for nonthreshold injuries which he or she causes in the same manner as an insured driver, despite the provision of section (2) which conditions the abolition of all "tort liability" upon the carrying of required no-fault insurance. (Frankly, this Court shares the views expressed in the dissenting opinion by Justice Cavanagh in *Hill* that sections (1) and (2) of the statute "should be read together and harmonized" and that the legislature intended that persons who do not carry the required no-fault insurance remain liable to their victims for all of the injuries and damages they cause.)

The *Hill* Court found that the legislative scheme in this statute is that a victim of an uninsured motorist may recover all of his or her property damages from the uninsured driver but may only recover his or her personal injury damages which exceed the threshold injuries. It did so by adopting language from an earlier Supreme Court decision in *Bradley v. Mid-Century Ins. Co.,* 409 Mich 1 (1980), at p. 62 that "If a motorist is uninsured he may be sued for all economic loss as well as above-threshold non-economic loss." The *Hill* Court also discussed *Citizens Ins. Co. v. Tuttle*, 411 Mich 536 (1981) in which an uninsured person was found liable for economic losses caused when his escaping cow hit a tractor and trailer.

None of these three holdings are directly on point. *Hill* dealt with a

claim for noneconomic losses. *Bradley* dealt with the question of policy offsets and, as will be discussed later, predated the addition of subsections (2)(d) and (3) to the statute. *Tuttle* held that the damages did not arise out of the tortfeasor's ownership, maintenance or use of a motor vehicle but rather out of his negligent keeping of the cattle and was, therefore, not controlled by the statute. Thus, although the language of each of these three cases seems to support plaintiff's position, they are not controlling.

After the *Bradley* decision, the legislature added subsection (2)(d) and subsections (3) - (6) to the statute. As the *Tuttle* Court noted, the amendment was also long after the date of the accident in that case and therefore was not considered there either. See 411 Mich 536, fn 4 at p. 543. The legislative scheme for the disposition of claims for economic losses must now be considered in light of that addition to the statute which allows "damages up to $400.00 to motor vehicles, to the extent that the damages are not covered by insurance" as an exception to the abolition of tort liability. The district court read this provision in conjunction with the *Hill* case and held that the legislature intended, as interpreted by the Supreme Court, that uninsured drivers would have the benefit of the no-fault abolition of tort liability, even though they did not carry the required insurance, to the extent provided in the statute. Under this interpretation, an uninsured driver would remain liable only for above-threshold noneconomic injuries and for property damage limited to a maximum of $400.

This Court cannot agree with that interpretation. The *Hill* Court made its ruling based upon the language in section (1) relating to noneconomic

losses. The law as to economic losses is contained in section (2). Subsection (2)(d) must be read in conjunction with the premise contained in section (2). Section (2) abolishes tort liability for insured motorists and the subsections which follow are only exceptions to that abolition of liability. Thus read, a motorist who carries no-fault insurance is not liable for any economic damages she or he causes, except for the first $400, and even then only if the victim did not have his or her own insurance for the that first $400. There is no other statutory abolition of a motorist's traditional tort liability for economic losses other than that which he secures by purchasing no-fault insurance. Since the defendant here did not maintain such insurance, she cannot avail herself of the protection of section (2) and the provisions of subsection (2)(d) never come into play.

The judgment of the district court is REVERSED and the case is REMANDED to the district court for entry of judgment in favor of plaintiff in the amount of $10,021.07.

Donald E. Shelton
Circuit Judge