STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK A. KELLER and
MARGARET L. KELLER,

Plaintiffs-Appellants,

v

CITIZENS INSURANCE COMPANY OF AMERICA,
a Michigan corporation,

December 14, 1992

No. 136376

UNPUBLISHED

Before: Sullivan, P.J., and MacKenzie and I.B. Torres*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant, their no-fault automobile insurance carrier. We affirm.

The facts are essentially undisputed. On January 28, 1988, plaintiffs' five-year-old son was struck and killed while attempting to cross a street after being let off his school bus. Plaintiff Margaret Keller was in her home, approximately 360 feet away, at the time of the accident. According to plaintiffs, Keller heard the screech of tires as the driver of the automobile which struck the child attempted to brake to avoid the accident. She immediately went outside, where she saw the boy's body lying near the roadway.

Margaret Keller subsequently underwent psychiatric treatment as a result of plaintiffs' son's death. Defendant denied coverage for the treatment under its no-fault policy issued to plaintiffs, and this declaratory judgment action followed. The trial court, relying on Williams v Citizens Mutual Ins Co of America, 94 Mich App 762; 290 NW2d 76 (1980), concluded that defendant properly denied coverage. We agree with this conclusion.

For plaintiffs to recover no-fault benefits, Margaret Keller's injury must have arisen out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. MCL 500.3105; MSA 24.13105. In order for an injury to arise out of the use of an automobile, there must be more than an incidental or fortuitous connection between the injury and the use of the automobile. Thornton v Allstate Ins Co, 425 Mich 643; 391 NW2d 320 (1986). Moreover, it is insufficient to show that, but for the automobile, the injury would not have have occurred. Auto-Owners Ins Co v Rucker, 188 Mich App 125, 127; 469 NW2d 1 (1991). Thus, "[t]he automobile must not merely contribute to cause the condition which produces the injury, but must, itself, produce the injury." Thornton, supra, p 651, quoting 6B Appleman, Insurance Law & Practice (Buckley ed), pp 367-368.

In Williams, supra, the plaintiff suffered mental distress due to her daughter's death in an automobile accident. As in the instant case, the plaintiff was not personally involved in the accident. The Williams Court held that the plaintiff's injury did not arise out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. 94 Mich App 764. "Rather, her injury arose out of the death of her daughter which in turn arose out of the operation of a motor vehicle." Id.

We decline to distinguish Williams as plaintiffs urge us to do, and find that decision dispositive here. Margaret Keller was not injured by the automobile which struck her son. Instead, Keller's mental distress was the result of her son's tragic death, wholly independent of the cause of that death. Her injury would have been the same had the boy's death arisen from an attacking dog or from a stray bullet, for example. Since the injury suffered by Keller had only a "but for," incidental, and fortuitous connection with the use of an

*Recorder's Court judge , sitting on the Court of Appeals by assignment.

automobile, it was outside the scope of coverage intended by MCL 500.3105; MSA 24.13105. Accordingly, we find no error in the decision of the trial court.

Affirmed.

/s/ Joseph B. Sullivan
/s/ Barbara B. MacKenzie
/s/ Isidore B. Torres