STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellee,

v

MELISSA JOHNSON STUDER,

Defendant-Appellant.

October 6, 1993

No. 148393
LC No. 91002621 NI

Before: Shepherd, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

Defendant appeals as of right a declaratory judgment in favor of plaintiff. We affirm.

Defendant was injured when an uninsured vehicle modified to compete in a demolition derby struck her while she was standing next to her brother's car on a private lot. Defendant's brother was insured by a policy issued by plaintiff. Defendant attempted to obtain insurance coverage through her brother's uninsured motorist coverage. Plaintiff denied coverage and brought this declaratory judgment action.

At the hearing on plaintiff's motion for summary disposition, plaintiff argued that the automobile was no longer a motor vehicle. Defendant maintained that the automobile was a motor vehicle because it was originally designed for use on public roads. The trial court found that the condition of the vehicle at the time of the injury determines whether the automobile was a motor vehicle. The trial court then determined that the demolition derby automobile was not an uninsured motor vehicle within the meaning of plaintiff's policy.

We find no merit in defendant's argument that the trial court erred in applying the Michigan no-fault act definition of a motor vehicle, MCL 500.3101(2)(c); MSA 24.13101(2)(c), to determine if the automobile was a motor vehicle. This specific issue is not preserved for our review because the trial court did not consider the definition of motor vehicle under the no-fault act on the record. See Orion Twp v State Tax Commission, 195 Mich App 13, 19; 489 NW2d 120 (1992). Rather, the trial court determined that the automobile did not fall within the definition of an uninsured motor vehicle contained in plaintiff's policy.

In addition, we agree with the trial court that the exclusionary clause in plaintiff's policy was applicable because the automobile was designed for use mainly off public roads. Plaintiff's policy provided benefits for bodily injury caused by an accident involving an uninsured motor vehicle. Plaintiff's policy also stated that:

> An uninsured motor vehicle does not include a land motor vehicle . . . designed for use mainly off public roads except while on public roads.

In this case, the automobile lacked windows, a rear bumper, headlights, turn signals, a dashboard, an alternator, and a hood. All the seats except one had been removed. The gas tank was removed and replaced with an outboard motor secured in a crate. The doors were chained and welded shut. The regular seat belts had been removed and a special harness seat belt had been installed for the driver. Under these circumstances, we find that the trial court did not err in finding that the vehicle was designed for use mainly

off public roads. Schoenith v Automobile Club of Michigan, 161 Mich App 232, 236-237; 409 NW2d 795 (1987).

Affirmed.

/s/ John H. Shepherd
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie