STATE OF MICHIGAN
COURT OF APPEALS

ALBERT ANSARA,

Plaintiff-Appellee,

v

STATE FARM INSURANCE COMPANY, an Illinois Corporation,

Defendant-Appellant.

FOR PUBLICATION

October 17, 1994
9:40 a.m.

No. 157737
LC No. 92-430487-NI

Before: Sawyer, P.J., and Fitzgerald and T.S. Eveland,* JJ.

FITZGERALD, J.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) on plaintiff's claim for first-party no-fault benefits. We reverse.

According to plaintiff, he was injured when he was proceeding to reenter his vehicle after assisting his wife into the vehicle. Specifically, plaintiff states that he had entered his car, started it, and switched on the air conditioner. He then left the vehicle, leaving the driver's side door open, walked around the car to open the front passenger door and to assist his wife in securing their grandson in a child-restraint device. He also assisted his wife in entering the car and closing the passenger door. Plaintiff then walked around the rear of the car and, while approaching the driver's side door to again enter the vehicle, he stepped upon a stone or other debris, resulting in a fracture of his ankle. Plaintiff states that he was approximately one foot away from the driver's car seat at the time of the injury, that he caught himself on the car and sat on the car seat after the injury.

On appeal, plaintiff argues that the trial court erred in concluding that there was no genuine issue of material fact that plaintiff was not entering into a motor vehicle at the time of his injury under MCL 500.3106(c); MSA 24.13106(c).[1] We agree. The distinction to be drawn in this case is, we believe, that posed between King v Aetna Casualty & Surety Co, 118 Mich App 648; 325 NW2d 528 (1982), and Hunt v Citizens Ins Co, 183 Mich App 660; 455 NW2d 384 (1990). In King, this Court concluded that the plaintiff was not entering a motor vehicle when he slipped on ice as he was reaching to unlock the car door, with his hand approximately two inches away from the car at the time of the fall. In Hunt, on the other hand, this Court concluded that the plaintiff was in the process of entering a motor vehicle when struck by another vehicle where he had his car keys in his hand and his left hand was on the car door. This Court concluded that there was a sufficient nexus between the use of the vehicle and the injury to give rise to coverage. Id. at 664. The case at bar is closer factually to Hunt than it is to King. Accordingly, the trial court erred in granting summary disposition in favor of defendant.

*Circuit judge, sitting on the Court of Appeals by assignment.

Reversed and remanded. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Thomas S. Eveland

[1] Section 3106 provides in pertinent part:

> (1) Accidential 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.

STATE OF MICHIGAN

COURT OF APPEALS

ALBERT ANSARA,

Plaintiff-Appellee,

v

No. 157737
LC No. 92-430487-NI

STATE FARM INSURANCE COMPANY, an Illinois corporation,

Defendant-Appellant.

Before: Sawyer, P.J., and Fitzgerald and T.S. Eveland,* JJ.

SAWYER, P.J. (dissenting).

I respectfully dissent.

I believe that this case is closer factually to King v Aetna Casualty & Surety Co, 118 Mich App 648; 325 NW2d 528 (1982), than to Hunt v Citizens Ins Co, 183 Mich App 660; 455 NW2d 384 (1990). Accordingly, I would affirm the grant of summary disposition.

/s/ David H. Sawyer

---

*Circuit judge, sitting on the Court of Appeals by assignment.