STATE OF MICHIGAN

COURT OF APPEALS

ROBERT ALAN SCHULTZ,

Plaintiff/Counter Defendant-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant/Counter Plaintiff-Appellee.

UNPUBLISHED
March 23, 1995

No. 160289
LC No. 91002512 NI

Before: Hood, P.J., and Marilyn Kelly and J.L. Martlew,* JJ.

PER CURIAM.

This is a claim for no-fault insurance benefits. Plaintiff appeals by leave granted[1] from an order of summary disposition for defendant. MCR 2.116(C)(10). We affirm.

Defendant denied insurance coverage for plaintiff's lost wages and medical bills. Plaintiff first argues that defendant applied an incorrect standard when determining the cause of his injuries in ruling that he had acted intentionally. MCL 500.3105(4); MSA 24.13105(4).

I

Even if defendant relied upon an incorrect standard, it is not reason to disturb the trial court's decision to grant summary disposition. The record indicates that the court correctly applied the law when holding that plaintiff was barred from receiving benefits. We find that the court was aware that, to find an intentional injury, it had to conclude that plaintiff intended both the act and the injury, not just the act. Bronson Methodist Hosp v Forshee, 198 Mich App 617, 629-630; 499 NW2d 423 (1993).

II

Next, plaintiff argues that the trial judge erred in failing to focus on his intent, not his acts, when determining intent as defined by the policy of insurance. The trial court did err by referring to an objective standard when considering if plaintiff intended his injuries. Clearly, a subjective standard applies to such inquiries. Bronson, supra, pp 629-630; Mattson v Farmers Ins Exchange, 181 Mich App 419, 424; 450 NW2d 54 (1989); Frechen v DAIIE, 119 Mich App 578, 580-582; 326 NW2d 566 (1982). Despite the court's erroneous reference to an objective standard, we believe it reached the correct result.

Viewing the facts in a light most favorable to plaintiff, the evidence showed that he quarrelled with his girlfriend. He then jumped from a moving van that he was driving. Statements he made before jumping established that he did so either to elicit the girlfriend's sympathy or to arouse feelings of guilt in her. Consequently, plaintiff's intent to cause himself injury can be inferred from the facts. He did not meet his burden of showing no intent to injure himself when he jumped, and defendant's motion

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

for summary disposition was properly granted. Meretta v Peach, 195 Mich App 695, 697; 491 NW2d 278 (1992); Parpart v Detroit, 194 Mich App 561, 563; 487 NW2d 506 (1992).

III

Lastly, plaintiff asserts a material issue of fact existed and should have been left for the trier of fact. The affidavit which plaintiff submitted to contradict his deposition testimony could not be used to establish a genuine issue of material fact. Barlow v John Crane-Houdaille, Inc, 191 Mich App 244, 249-250; 477 NW2d 133 (1991); Peterfish v Frantz, 168 Mich App 43, 54-55; 424 NW2d 25 (1988). Also, the fact that plaintiff claimed to be voluntarily intoxicated at the time of the incident would not vitiate or mitigate his intent. Group Ins Co of Michigan v Czopek, 440 Mich 590, 601; 489 NW2d 444 (1992). The trial court, therefore, did not err in granting summary disposition to defendant on the ground that there was no genuine issue of material fact.

Affirmed.

/s/ Harold Hood
/s/ Marilyn Kelly
/s/ Jeffrey L. Martlew

[1] Plaintiff filed this appeal as of right. However, the order appealed from was not a final order. The counterclaim filed by defendant had not yet been resolved, and the order from which the appeal had been taken lacked a statement that there was no just reason for delay. MCR 2.604(A). As a result, this Court has no jurisdiction over the matter as an appeal of right. Adams v Perry Furniture Co (On Remand), 198 Mich App 1, 5; 497 NW2d 514 (1993); Ulery v Coy, 153 Mich App 551, 555-556; 396 NW2d 480 (1986), vacated and remanded for reconsideration on other grounds 428 Mich 879 (1987); MCR 7.203(A). Nevertheless, we have elected to treat the case as if leave to appeal had been granted.