STATE OF MICHIGAN

COURT OF APPEALS

ALAN TURNER,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee,

UNPUBLISHED
October 6, 1995

No. 167627
LC No. 93-000043-NI

Before: Neff, P.J., and Hoekstra and G. Schnelz,* JJ.

PER CURIUM.

Plaintiff appeals as of right a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

The facts of this case are not in dispute. Plaintiff purchased, towed to a garage, and stored a vehicle that he intended to repair. While the vehicle was stored for repairs, plaintiff did not maintain a policy of insurance; however, plaintiff owned a second vehicle that was insured by defendant. During the repair process the vehicle ran out of gas, and while filling the tank with gas from a gas can, the fumes were ignited by a nearby kerosene heater, resulting in injury to the plaintiff. Plaintiff filed a claim for personal insurance protection benefits. Defendant denied the claim and plaintiff filed this action. We affirm the trial court's grant of summary disposition for defendant because we find that plaintiff was not maintaining a vehicle within the meaning of the no-fault statute.[1]

The no-fault act provides that an insurer must pay personal insurance protection benefits to an injured insured when the insured's "accidental bodily injury arises from the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." MCL 500.3105(1); MSA 24.13105. In order for the injury to arise out of the maintenance of a motor vehicle, there must be a causal connection between the injury and the maintenance. Turner v Auto Club Ins Ass'n, 448 Mich 22; 528 NW2d 681 (1995). The Supreme Court in Turner summarized the considerations that go into making a decision as to whether there exists a causal relationship between an injury and a motor vehicle as follows:

> [T]he primary consideration in the causation analysis "must be the relationship between the injury and the vehicular use of a motor vehicle. Thornton [v Allstate Ins Co, 425 Mich 643, 659-660; 391 NW2d 320 (1986)]. In addition, the relationship between the use of the vehicle as a motor vehicle and the injury must be "more than incidental, fortuitous or 'but for,'" and the vehicle's connection with the injury should be "'directly related to its character as a motor vehicle.'" Id. at 659. On the basis of the particular facts in Thornton we concluded that the requisite causal connection had not been established, emphasizing that "[t]he motor vehicle was not the instrumentality of the injuries," and that "the injury could have occurred whether or not [the claimant] used a motor vehicle as a motor vehicle." Thornton supra at 660.

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

In Auto-Owners Ins Co v Citizens Ins Co of America, 189 Mich App 458; 473 NW2d 753 (1991), this Court found no causal connection between damages sustained when gas fumes were ignited by a water heater. The plaintiff's theory was that because the water heater was used by the automotive garage for maintenance purposes and fumes from a gas line that was being drained from a motor vehicle were ignited by that water heater, there was a causal relationship to the ensuing damages that triggered benefits under the no-fault act. This Court disagreed and held that the relationship between the motor vehicle and the damages was not a close and direct connection. The relationship between the maintenance and the damage failed to rise above the level of being simply "incidental, fortuitous or but for." Id. at 460.

Similarly, we find that here plaintiff's injuries are not causally related to the maintenance of a motor vehicle within the meaning of the no-fault statute. Plaintiff's injuries occurred as a result of gasoline fumes being ignited by a kerosene heater that was used to heat the garage in which plaintiff was working. The kerosene heater, like the water heater in Auto Owners, was not directly related to or connected with the maintenance of the motor vehicle. Plaintiff's injuries could just as easily have resulted from working on a lawn mower, a tractor, or any other non-vehicular gas-powered property. There being no direct relationship between the kerosene heater and the maintenance of plaintiff's motor vehicle, there can be no causal connection sufficient to trigger benefits under the no-fault act.

Plaintiff claims that the kerosene heater was necessary to provide heat while the repairs were being done on the vehicle during a cold Michigan winter. For the same reason that this Court rejected a similar argument in Auto-Owners relative to the water heater used by the garage, we conclude that a kerosene heater is not the kind of instrumentality that bears a close and direct connection to the maintenance of motor vehicles. Heat is an incidental necessity for almost any indoor activity performed during winter in Michigan and, therefore, bears no direct relationship to vehicle maintenance.

Finally, we reject plaintiff's claim that defendant's pleading conceded the issue of the causal connection between the injury and the maintenance of the motor vehicle. Plaintiff was placed on notice that a challenge would be made to plaintiff's prima facie case. This notice made defendant's challenge proper.

Affirmed.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gene Schnelz

[1] Because we have concluded that plaintiff was not maintaining a vehicle, we need not reach the issue of whether plaintiff, if he were maintaining a vehicle, would have been entitled to coverage under the no-fault act.