STATE OF MICHIGAN

COURT OF APPEALS

MARY LYN GIRODAT,

Plaintiff-Appellant,

v

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
March 4, 1997

No. 194688
LC No. 93-304719-CK

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

Following an automobile accident, plaintiff, Mary Lyn Girodat ("plaintiff" or "Ms. Girodat") brought this declaratory judgment action to obtain uninsured motorist benefits under her no-fault insurance policy with defendant. The circuit court granted summary disposition to defendant pursuant to MCR 2.116(C)(10) and a different panel of this Court, in a prior appeal (unpublished order, Docket No. 166075) vacated that decision and remanded for further proceedings. Defendant applied for leave to appeal to the Michigan Supreme Court which, in lieu of granting the leave application, remanded this case to this Court for plenary consideration. We now affirm the circuit court's grant of summary disposition.

The facts are undisputed. Plaintiff was traveling west on I-696 at fifty-five miles per hour when a car in front of her swerved to avoid hitting a tire which was lying in the middle of the traffic lane. Plaintiff's attempt to swerve left was blocked by other traffic so she swerved to the right. As a result, she hit the tire and lost control of her vehicle which went onto the shoulder of the road, and flipped over. Plaintiff presented no evidence of the origin of the tire and no evidence of a "disappearing vehicle."

Plaintiff failed to establish that her claim falls within the uninsured motorist provision of her no-fault insurance contract. See *Heniser v Frankenmuth Mut Ins*, 449 Mich 155, 172; 534 NW2d 502 (1995). Defendant successfully argued to the circuit court that plaintiff's contact with the tire did not satisfy the "physical contact" requirement of the definition of an "uninsured motor vehicle." We agree. This case is virtually identical to *Kersten v DAIIE*, 82 Mich App 459; 67

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

NW2d 425 (1978). In *Kersten*, we required that there be a direct causal connection between the hit-and-run vehicle and the plaintiff's vehicle, and that the connection be carried through to the plaintiff's vehicle by a continuous and contemporaneously transmitted force from the hit-and-run vehicle. *Id.* 82 Mich App at 471. There must be "clearly definable or objective evidence (rather than inferential evidence) of a link between a disappearing vehicle and plaintiff's vehicle." *Id*, 82 Mich App at 472. The plaintiff in *Kersten* presented more proof than Ms. Girodat that the tire was from a vehicle.[1] Nonetheless, in *Kersten*, we found the chain of causation too speculative and reversed the circuit court's ruling that the accident was covered by the uninsured motorist provision of defendant's policy. Because plaintiff's proof here is more speculative than that of the plaintiff in *Kersten*, we conclude that the circuit court correctly granted summary disposition to defendant.

The later cases of *Adams v Zajac*, 110 Mich App 522; 313 NW2d 347 (1981), *Hill v Citizens Ins Co of America*, 157 Mich App 383; 403 NW2d 147 (1987); and *Berry v State Farm Auto Ins*, 219 Mich App 340; 556 NW2d 207 (1996), all support this conclusion. They reaffirmed the principle that there must be a substantial physical nexus between a "disappearing vehicle" and the object struck to satisfy the "physical contact" requirement of the uninsured motorist insurance coverage. *Adams*, 110 Mich App at 529; *Hill*, 157 Mich App at 393-394; *Berry*, 219 Mich App at 347-352. Although *Adams* and *Berry* did allow the use of "inferential evidence," they did so with evidence of an actual "disappearing vehicle." There was no "disappearing vehicle" in this case.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Michael D. Schwartz

[1] In *Kersten*, there was testimony that the tire in the road was still spinning when the plaintiff hit it. 82 Mich App at 464.