STATE OF MICHIGAN

COURT OF APPEALS

CANISHA GRAVES,

Plaintiff-Appellant,

v

KYARA COLLIER and JOHN DOE INSURER,

Defendants,

and

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendant-Appellee.

UNPUBLISHED
October 22, 2020
APPROVED FOR PUBLICATION
December 3, 2020
9:05 a.m.

No. 350131
Wayne Circuit Court
LC No. 18-012827-NI

Before: SWARTZLE, P.J., and JANSEN and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order for entry of default judgment against defendant, Kyara Collier. However, plaintiff actually challenges on appeal the trial court's earlier order granting summary disposition to defendant, Michigan Automobile Insurance Placement Facility (MAIPF), under MCR 2.116(C)(10). We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

This case concerns injuries to plaintiff sustained in a motor vehicle accident. Plaintiff gave her friend a ride in plaintiff's uninsured vehicle. At their destination, plaintiff parallel parked her vehicle on the street with her driver's side door facing the street, turned off the vehicle, and exited the vehicle. At the same time, Collier and her sister, who were parallel parked in front of plaintiff's vehicle, exited their vehicle. When Collier and her sister suddenly ran back to their vehicle and got in it, plaintiff and her friend were prompted to run back to plaintiff's vehicle. Plaintiff opened the driver's side door of her vehicle, but before she could get inside, Collier's vehicle hit plaintiff's

door, pinning plaintiff's arms and legs between the door and her vehicle. Collier then reversed her vehicle, allowing plaintiff to get free and run behind her vehicle for safety.

Plaintiff sued MAIPF for first-party no-fault benefits, alleging it unreasonably refused to pay or assign plaintiff's claim for no-fault benefits to a Michigan no-fault insurer. Plaintiff named John Doe Insurer as the prospective assigned insurer by MAIPF, alleging it also failed to pay plaintiff's claim for no-fault benefits. To date, MAIPF has not assigned an insurer to plaintiff's claim.

MAIPF filed a motion for summary disposition in lieu of an answer, arguing plaintiff was not entitled to no-fault benefits because she failed to maintain effective security on her vehicle at the time of the accident as required under MCL 500.3101. In response, plaintiff argued security was not required when plaintiff had exited her vehicle. In a reply brief, MAIPF argued for the first time, plaintiff was also ineligible for no-fault benefits under the "parked car exclusion" of MCL 500.3106(1)(c). Plaintiff objected, contending MAIPF was required to assert all its arguments in its motion for summary disposition. The trial court dismissed the motion without prejudice and adjourned it to allow plaintiff to file a response to MAIPF's additional argument.

Plaintiff filed a supplemental response, asserting the parked car exclusion did not preclude her from no-fault benefits because her claim was not related to the operation of her vehicle but to avoid being hit by Collier. MAIPF responded that the parked car exclusion treated entering and occupying a vehicle in the exact same manner and because plaintiff's injury arose out of using her vehicle, she was ineligible for no-fault benefits.

The trial court held a hearing on MAIPF's motion for summary disposition, where the parties argued consistent with their briefs. Ultimately, the trial court granted MAIPF's motion for summary disposition, finding there was uncontroverted evidence plaintiff intended to operate her vehicle when she parked it, and there was no genuine issue of material fact that plaintiff was driving her uninsured vehicle on the day of the accident. Therefore, plaintiff was required to maintain the requisite security on her vehicle, concluding her injuries on reentry into the vehicle were directly related to the vehicle's character and use. After entry of the summary disposition order, the trial court entered a default judgment against Collier. This appeal followed.

II. STANDARD OF REVIEW

This Court:

> review[s] a trial court's decision regarding a motion for summary disposition de novo. *Lowrey v LMPS & LMPJ, Inc.*, 500 Mich 1, 5-6, 890 NW2d 344 (2016). A motion for summary disposition brought under MCR 2.116(C)(10) "tests the factual sufficiency of the complaint," *Shinn v Mich Assigned Claims Facility*, 314 Mich App 765, 768, 887 NW2d 635 (2016), and should be granted when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law," *West v Gen Motors Corp*, 469 Mich 177, 183, 665 NW2d 468 (2003).
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> "The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence."

> *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 693, 818 NW2d 410 (2012). The court must consider all of the admissible evidence in a light most favorable to the nonmoving party. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29, 772 NW2d 801 (2009). However, the party opposing summary disposition under MCR 2.116(C)(10) "may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Oliver v Smith*, 269 Mich App 560, 564, 715 NW2d 314 (2006) (quotation marks and citation omitted). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Bahri v IDS Prop Cas Ins Co*., 308 Mich App 420, 423, 864 NW2d 609 (2014) (quotation marks and citation omitted). [*Lockwood v Twp of Ellington*, 323 Mich App 392, 400-401; 917 NW2d 413 (2018).]

This Court also reviews de novo whether the trial court properly interpreted and applied the relevant statutes. *Mich Ass'n of Home Builders v City of Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). In interpreting a statute, the reviewing court's role is to find out the legislative intent that may reasonably be inferred the express language in the statute. *Id*. If the statutory language is unambiguous, then the statute must be applied as written without judicial interpretation. *Id*. It is presumed "the Legislature intended the meaning it plainly expressed . . . ." *Cox v Hartman*, 322 Mich App 292, 298-299; 911 NW2d 219 (2017) (quotation marks and citation omitted). In particular, "[t]he no-fault insurance act is remedial in nature and must be liberally construed in favor of persons intended to benefit from its goal of guaranteeing motor vehicle accident victims compensation for certain economic losses." *Copus v MEEMIC Ins Co*, 291 Mich App 593, 596; 805 NW2d 623 (2011) (quotation marks and citation omitted).

III. ANALYSIS

Plaintiff asserts the trial court erred in granting summary disposition to MAIPF and finding plaintiff's vehicle was involved in the accident, requiring her to maintain effective security on her vehicle to be eligible for no-fault benefits. We disagree.

Plaintiff first argues she was not required to maintain security on her vehicle because she was not operating the vehicle on a highway at the time of the accident. "The purpose of the Michigan no-fault act is to broadly provide coverage for those injured in motor vehicle accidents without regard to fault." *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 37; 748 NW2d 574 (2008). MCL 500.3101(1) states:

> [T]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance and property protection insurance . . . . Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway. [MCL 500.3101(1).]

Although the no-fault act is meant to protect all Michigan residents injured in motor vehicle accidents, *Iqbal*, 278 Mich App at 37, those benefits are unambiguously tied to the owner's

responsibility to maintain effective security of their vehicle, *Dye by Siporin & Assoc, Inc v Esurance Prop & Cas Ins Co*, 504 Mich 167, 182; 934 NW2d 674 (2019).

" 'Security is only required to be in effect during the *period* the motor vehicle is driven or moved on a highway.' " *Shinn v Mich Assigned Claims Facility*, 314 Mich App 765, 774; 887 NW2d 635 (2016), quoting MCL 500.3101(1) (emphasis added). "The term 'period' is defined as 'the completion of a cycle, a series of events, or a single action.' " *Id.* at 775, quoting *Merriam-Webster's Collegiate Dictionary* (11th ed).

We conclude that the trial court did not err in finding MCL 500.3101(1) required plaintiff to maintain security on her vehicle. Plaintiff contends she was not required to maintain security on her vehicle at the time of the accident because it was turned off and parked. However, plaintiff's interpretation of the security requirement would effectively rewrite the statute to mean security is only required while the motor vehicle is actually being driven or moved on the highway. We decline to accept plaintiff's interpretation, and instead conclude that the driving period in MCL 500.3101(1) refers to any time the owner of the vehicle expects and intends the vehicle to be driven or moved on a highway on demand.[1] In this case, plaintiff's testimony established that she ran to her vehicle and opened the driver's side door with the intention of getting inside and leaving. Thus, plaintiff was required to comply with the security requirement found in MCL 500.3101(1).

Plaintiff also argues MCL 500.3113(b), which would preclude her from recovering PIP benefits due to her failure to comply with MCL 500.3101(1), is not applicable because her vehicle was parked when the accident occurred and not involved in the accident. Under MCL 500.3113(b), a person is precluded from no-fault benefits for accidental bodily injury if at the time of the accident:

> (b) The person was the owner or registrant of a motor vehicle *involved in the accident* with respect to which the security required by section 3101 or 3103 was not in effect. [MCL 500.3113(b) (emphasis added).]

Thus, the owner of an uninsured vehicle is not entitled to no-fault benefits for injury resulting from an accident involving that vehicle. *Iqbal*, 278 Mich App at 45. To be involved in the accident, the vehicle "must actively, as opposed to passively, contribute to the accident, and have more than a random association with the accident scene. There must be some activity, with respect to the vehicle, which somehow contributes to the happening of the accident." *Detroit Med Ctr v Progressive Mich Ins Co*, 302 Mich App 392, 396; 838 NW2d 910 (2013) (alteration, quotation marks and citations omitted).

[1] Comparatively, plaintiff would not be required to maintain security on her vehicle while the vehicle was undergoing repairs, *Shinn*, 314 Mich App at 774-775, or where the vehicle was placed in storage. *MEEMIC Ins Co v Mich Millers Mut Ins*, 313 Mich App 94, 102; 880 NW2d 327 (2015) .

We conclude that under MCL 500.3113(b), plaintiff was indeed precluded from recovering PIP benefits. Plaintiff contends she was only a few feet away from her vehicle when the sudden actions of Collier and her sister prompted her to run back to her parked vehicle. As plaintiff stood on the edge of the street near her driver's side door, she saw Collier's vehicle rapidly coming toward her. To avoid being run-over by Collier's vehicle, plaintiff sought shelter in her vehicle: plaintiff opened the door and attempted to get inside. Before plaintiff could get into the driver's seat, Collier's vehicle collided with the open door, pinning plaintiff between the door her vehicle. Plaintiff's use of the vehicle as a safety barrier does not change the vehicle's involvement in the accident for purposes of MCL 500.3113(b). By opening the car door and attempting to enter her vehicle, plaintiff actively contributed to the occurrence of the accident. Plaintiff's vehicle had more than a "random association with the accident scene" and, instead, actively contributed to the accident and plaintiff's injuries. *Detroit Med Ctr*, 302 Mich App at 396. Therefore, plaintiff was precluded from no-fault benefits under MCL 500.3113(b).

Finally, we briefly address MAIPF's assertion that as alternate grounds for affirmance, plaintiff cannot take advantage of the parked car exclusion found in MCL 500.3106(1)(c) because plaintiff was entering her vehicle at the time of the accident. Generally, a parked vehicle is not involved in an accident unless "the injury was sustained by a person while occupying, entering into, or alighting from the vehicle." MCL 500.3106(1)(c); *Shinn*, 314 Mich App at 771. Entry does not occur when a person is simply preparing to enter a vehicle. *King v Aetna Cas and Surety Co*, 118 Mich App 648, 650-651; 325 NW2d 528 (1982). Rather, entry occurs when a plaintiff touches or opens her car door. *Hunt v Citizens Ins Co*, 183 Mich App 660, 664; 455 NW2d 384 (1990). Because plaintiff opened the door to her vehicle with the intention of entering the vehicle, plaintiff had entered her vehicle within the context of MCL 500.3106(1)(c) at the time the accident occurred. Therefore, plaintiff is also precluded from obtaining no-fault benefits under this subsection.

Affirmed.

/s/ Brock A. Swartzle
/s/ Kathleen Jansen
/s/ Stephen L. Borrello