STATE OF MICHIGAN

COURT OF APPEALS

VIBRA OF SOUTHEASTERN MICHIGAN, LLC,

Plaintiff-Appellee,

v

AUTO-OWNERS INSURANCE COMPANY and HOME-OWNERS INSURANCE COMPANY,

Defendants-Appellants.

UNPUBLISHED
July 22, 2021

No. 355287
Wayne Circuit Court
LC No. 19-009663-NF

Before: RIORDAN, P.J., and M. J. KELLY and SHAPIRO, JJ.

PER CURIAM.

Plaintiff brought this action against defendant insurers to collect payment for services rendered to the insured. On appeal, defendants argue that the trial court erred by determining that the insured was entitled to no-fault benefits under two parked-vehicle exceptions, MCL 500.3106(1)(b) and (c). For the reasons stated in this opinion, we affirm.

I. BACKGROUND

On February 3, 2019, Randall Baran and his wife Vawn spent the evening at a Super Bowl party at their daughter's house. Vawn drove the couple home in their 2014 Jeep Grand Cherokee and parked in the garage. Randall exited the vehicle and Vawn pushed a button inside the vehicle that opened the motorized liftgate so that Randall could access the rear of the vehicle to retrieve dirty dishes that had been used at the party. To grab the dishes from the floor of the vehicle, Randall bent over and reached into the back of the vehicle. Vawn testified that Randall was "inside the [vehicle] pulling out the dishes" when the liftgate came down and struck him "on the back of the head." A few days later Randall collapsed at his home and was taken to the hospital where he was diagnosed with a significant brain injury.

Plaintiff filed this action as Randall's assignee to recover payment for long-term care and rehabilitation services it rendered to Randall following his injury. Plaintiff alleged that either Auto-Owners Insurance Company or Home-Owners Insurance Company was the no-fault insurer responsible for payment of personal protection insurance (PIP) benefits arising from Randall's motor vehicle incident. Plaintiff and defendants subsequently filed competing motions for

summary disposition, disputing the applicability of the parked-vehicle exceptions contained in MCL 500.3106(1)(b) and (c). The trial court ultimately denied defendants' motion for summary disposition and granted summary disposition to plaintiff, concluding that both exceptions apply to the facts of this case and rendered defendants liable to pay PIP benefits to Randall and plaintiff as his assignee. The court later entered a stipulated order stating the attorney fees and interest Home-Owners would pay plaintiff if this Court affirmed its ruling on summary disposition.[1] This appeal followed.[2]

II. ANALYSIS

Under the no-fault act, MCL 500.3101 *et seq.*, an insurer "is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." MCL 500.3105(1). "Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle" unless one of the listed exceptions applies. MCL 500.3106(1). There is a three-step framework for determining whether a claimant is entitled to PIP benefits for an injury involving a parked vehicle:

> [The claimant] must demonstrate that (1) his conduct fits one of the three exceptions of subsection 3106(1); (2) the injury arose out of the ownership, operation maintenance, or use of the parked motor vehicle as a motor vehicle, and (3) the injury had a causal relationship to the parked motor vehicle that is more than incidental fortuitous, or but for. [*Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635-636; 563 NW2d 683 (1997).[3]]

---

[1] Defendants repeatedly indicated, and the trial court acknowledged, that Auto-Owners was improperly named as a defendant in this case. However, Auto-Owners was never dismissed from the action and is still a party on appeal.

[2] We review de novo a trial court's decision to grant summary disposition. *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v City of Pontiac*, 309 Mich App 611, 617; 873 NW2d 783 (2015). "Summary disposition is appropriate under MCR 2.116(C)(10) if 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). We also review de novo question of statutory interpretation. See *Bazzi v Sentinel Ins Co*, 502 Mich 390, 398; 919 NW2d 20 (2018). "[G]iven the remedial nature of the no-fault act, courts must liberally construe its provisions in favor of the persons who are its intended beneficiaries." *Griffin v Trumbull Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 344272); slip op at 4 (quotation marks and citation omitted).

[3] In their appellate brief, defendants argue only that the trial court erroneously concluded that MCL 500.3106(1)(b) and (c) apply in this case, i.e., they challenge only the first prong of the three-part framework. In their reply brief, defendants now claim that they in fact challenge all three parts of the analysis; they reason that by contesting the applicability of MCL 500.3106(1)(b) and (c), they are "inherently and expressly" contesting the second and third prongs as well. This argument is

Defendants argue that the trial court erroneously concluded that the exception listed in MCL 500.3106(1)(b) rendered them liable for PIP benefits associated with Randall's injury. We disagree.

MCL 500.3106(1)(b) consists of two separate clauses and "provides coverage when the injury was the direct result of physical contact with either (1) equipment permanently mounted on the vehicle, while the equipment was being operated or used, *or* (2) property being lifted onto or lowered from the vehicle in the loading or unloading process." *Adanalic v Harco Nat Ins Co*, 309 Mich App 173, 181; 870 NW2d 731 (2015) (quotation marks omitted). The parties agree that the first clause does not apply. The liftgate was not equipment permanently mounted on the vehicle but rather was part of the vehicle itself. See *Frazier v Allstate Ins Co*, 490 Mich 381, 386; 808 NW2d 450 (2011) (holding that a vehicle's door constituted a part of the vehicle itself, rather than equipment mounted on the vehicle).

The question is whether the trial court correctly concluded that the second clause of MCL 500.3106(1)(b) applies to the facts of this case. Again, the second clause "provides coverage when the injury was the direct result of physical contact with . . . property being lifted onto or lowered from the vehicle in the loading or unloading process." *Adanalic*, 309 Mich App at 181 (quotation marks omitted). The second clause "does not require that the property, itself, inflict the injuries. It only requires that the injuries directly result from physical contact with the property." *Id*. at 182. Further, the phrase "direct result" as used in the statute does "not require an instantaneous occurrence, but one which proceeds in a direct fashion." *Id*. at 183.

In this case, Vawn testified that Randall bent over and reached into the rear of the vehicle in order to remove dishes from the vehicle. Thus, Vawn's uncontradicted testimony established that Randall was unloading property from the vehicle. Defendants argue, however, that Randall's injury was not the direct result of his contact with the dishes because he was not injured by the weight of the dishes or a movement he made in the unloading process; rather, he was injured by the falling liftgate. As discussed, MCL 500.3106(1)(b) does not require that the property itself cause the injury. Rather, it merely requires that "there be physical contact with the property being loaded [or unloaded] and that the physical contact directly results in the injury." *Id*. at 182. Randall would not have been within the trajectory of the falling liftgate absent his physical contact with the dishes he was unloading. Moreover, had Randall not been in the process of unloading the

---

unpersuasive. First, if defendants could "inherently and expressly" challenge the second and third parts of the analysis by only addressing the first part, there would be no reason for a three-part analysis. Second, defendants do not set forth any specific arguments regarding the second or third prongs, other than merely claiming that these prongs are inherent to their discussion of the first prong. Accordingly, defendants have abandoned any argument regarding the second and third prongs. See *Seifeddine v Jaber*, 327 Mich App 514, 520; 934 NW2d 64 (2019) ("Failure to adequately brief an issue constitutes abandonment."). See also *Maple BPA, Inc v Bloomfield Charter Twp*, 302 Mich App 505, 517; 838 NW2d 915 (2013) ("A party abandons an issue when it fails to include the issue in the statement of questions presented in its appellate brief . . . .").

dishes, his hands would have been free to prevent the liftgate from striking him in the head. Accordingly, Randall's contact with the dishes directly resulted in his injury.

Defendants also argue that the trial court erred by concluding that MCL 500.3106(1)(c) applies on the ground that Randall was an occupant of the vehicle at the time of his injury. However, because the trial court correctly held that MCL 500.3106(1)(b) applies, Randall, and plaintiff as his assignee, is entitled to PIP benefits regardless of whether MCL 500.3106(1)(c) is also satisfied. See *id*. at 196 n 10. Thus, we decline to address the applicability of MCL 500.3106(1)(c).[4]

Affirmed. Plaintiff may tax appellate costs as the prevailing party. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Douglas B. Shapiro

[4] The dissent's discussion of the viability of a products liability suit based on the failure of the liftgate is neither here nor there. The existence of possible tort suit is wholly irrelevant to the question whether the injury "arose out of the use of a motor vehicle." MCL 500.3105(1). The dissent would apparently conclude that a suit against an auto or tire manufacturer for a defect leading to injury or even a suit against an at-fault driver would preclude a no-fault claim. Such a view mistakenly views the no-fault system as a tort system.