STATE OF MICHIGAN

COURT OF APPEALS

AMERICAN EMPIRE SURPLUS LINES INSURANCE COMPANY,

Plaintiff-Appellant,

v

MICHIGAN MUTUAL INSURANCE COMPANY,

Defendant-Appellee,

and

UNITED AMBULANCE SERVICE, INC.,

Defendant.

UNPUBLISHED
August 9, 1996

No. 177206
LC No. 93-466889-CK

Before: Neff, P.J., and Jansen and G. C. Steeh, III,* JJ.

PER CURIAM.

Plaintiff American Empire Surplus Lines Insurance Company appeals as of right from the order of the circuit court granting summary disposition to defendant Michigan Mutual Insurance Company. We affirm.

I

The underlying facts of this insurance dispute are not contested. United Ambulance Service, Inc. was the insured. Plaintiff, American Empire, was the general liability insurer and defendant, Michigan Mutual, provided automobile insurance pursuant to the no-fault act. MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*

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

This suit is a result of the alleged negligence of employees of United Ambulance while on an ambulance run to assist an injured individual. The United Ambulance employees stopped the ambulance in front of the patient's apartment, turned off the siren, but left the engine running. They went to the patient's apartment, placed her on a stretcher and began carrying her down a flight of steps in the building. While still on the stairs and obviously before reaching the ambulance, the stretcher broke and the patient fell and was injured. The patient's family sued United Ambulance after the patient died, allegedly as a result of the fall. American Empire undertook the defense of that suit, and ultimately settled it. Michigan Mutual, however, refused to participate, claiming that it had no duty to do so under the no-fault act.

American Empire then filed this declaratory judgment action seeking a ruling that Michigan Mutual had a duty to defend and indemnify United Ambulance in the underlying action and that American Empire was entitled to contribution from Michigan Mutual. The circuit court granted Michigan Mutual's motion for summary disposition, and denied American Empire's cross-motion for summary disposition, finding that Michigan Mutual owed no duty to defend or contribute with regard to the underlying cause of action because the ambulance was not being used as a motor vehicle under MCL 500.3105(1); MSA 24.13105(1), and that even if it was, coverage was excluded under the parked vehicle exception, MCL 500.3106; MSA 24.13106.

II

We will address American Empire's argument that the trial court erred in holding that coverage was excluded under the parked vehicle exception because we find it dispositive of this appeal. For the purposes of this discussion, we assume, without deciding, that the ambulance was being used as a motor vehicle for the purposes of MCL 500.3105; MSA 24.13105.

A

Section 3106 provides an exclusion of coverage that would otherwise be applicable under § 3105(1). Specifically, § 3106 provides in pertinent part:

> (1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:
>
> * * *
>
> (b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process. [MCL 500.3106; MSA 24.13106.]

On our reading of this statutory provision, we conclude that coverage for the injury in question was excluded by § 3106.

B

First, contrary to American Empire's argument, we conclude that the ambulance was parked. This Court has previously held that the term "parked" in § 3106 merely refers to "one form of stopping." *Harris v Grand Rapids Area Transit Authority*, 153 Mich App 829, 832; 420 NW2d 877 (1986). Because there is no question in this case that the ambulance was stopped, we conclude that it was parked.

C

Next, we also disagree with American Empire's argument that one of the exceptions to § 3106 applies to this case.

Although American Empire admits that the stretcher was not being lifted onto the vehicle, it argues that the exception in § 3106(1)(b) is relevant here because that exception applies to preparing to lift something into a vehicle, and the emergency technicians were, by carrying the stretcher to the ambulance, preparing to lift it onto the vehicle.

This Court has repeatedly followed the statutory language in § 3106(1)(b), and determined that coverage only exists if the injury results while the item is actually being lifted into the vehicle. See *Bell v FJ Boutell Driveway Co*, 141 Mich App 802, 808-809; 369 NW2d 231 (1985); *Block v Citizen's Ins Co of America*, 111 Mich App 106, 109; 314 NW2d 536 (1981); and *Dembinski v Aetna Casualty and Surety Co*, 76 Mich App 181, 183; 256 NW2d 69 (1977). Thus, where, as here, mere preparations are being made to lift the object into the vehicle, the exception to the exclusion in § 3106(1) does not apply.

Because the ambulance was parked, and none of the exceptions to § 3106(1) apply, we conclude that the trial court properly granted summary disposition in favor of Michigan Mutual.

Affirmed.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ George C. Steeh, III