

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA J. REED,

Plaintiff-Appellee/Cross-Appellant,

v

DETROIT BOARD OF EDUCATION,

Defendant,

and

MICHIGAN MUTUAL INSURANCE COMPANY,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
October 17, 1997

No. 192677
Wayne Circuit
LC No. 95-525058

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ.

PER CURIAM.

Defendant Michigan Mutual Insurance Company appeals by leave granted from an order denying its motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff cross-appeals from the same order denying her motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm in part and reverse in part.

Plaintiff was employed with the Detroit Board of Education as a school bus driver. As she was driving an empty bus on her way to pick up children at the end of a school day, a vehicle tried to pass the bus on the right side but was blocked by cars parked in the right lane. The vehicle then pulled along the left side of the bus. An occupant of the vehicle fired a shot at the bus, shattering the driver's side window. Plaintiff was not struck by the bullet. As a result of this incident, plaintiff suffered post traumatic stress syndrome, which rendered her totally disabled from any employment.

Plaintiff filed a complaint, claiming entitlement to personal insurance benefits under the No-Fault Act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.* Defendant Michigan Mutual Insurance

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

Company, her employer's insurer, moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff was not entitled to benefits because her injuries did not arise out of the ownership, operation, maintenance, or use of a motor vehicle. Plaintiff filed a cross motion for summary disposition, also pursuant to MCR 2.116(C)(10), arguing that she was entitled to benefits under the undisputed facts and the law. The trial court denied both motions for summary disposition because it found that genuine issues of material fact existed and that discovery was incomplete.

On appeal, defendant contends that the trial court erred in denying its motion for summary disposition because there was no relationship between plaintiff's injury and her use of a motor vehicle, and defendant was therefore entitled to summary disposition as a matter of law. On cross-appeal, plaintiff argues that she is entitled to insurance benefits because she sustained an accidental bodily injury while operating the school bus as a motor vehicle, and her injury was a foreseeable risk of driving.

We review the trial court's ruling on a motion for summary disposition de novo to determine whether the pleadings or the uncontroverted documentary evidence established that a party is entitled to judgment as a matter of law. MCR 2.116(I)(1); *Kennedy v Auto Club of Michigan*, 215 Mich App 264, 266; 544 NW2d 750 (1996). The court must give the benefit of any reasonable doubt to the nonmovant and determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703, 706; 532 NW2d 186 (1995).

The No-Fault Act is remedial in nature. *McKenney v Crum & Forster*, 218 Mich App 619, 623; 554 NW2d 600 (1996). No-fault benefits are payable for accidental bodily injuries arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3105(1); MSA 24.13105(1). The Legislature chose to provide coverage under the Act "only where the causal connection between the injury and the use of a motor vehicle as a motor vehicle is more than incidental, fortuitous, or 'but for.' The involvement of the [vehicle] in the injury should be directly related to its character as a motor vehicle." *Thornton v Allstate Ins Co*, 425 Mich 643, 659; 391 NW2d 320 (1986).

In *Kennedy*, *supra* at 265, the plaintiff was a passenger in a vehicle traveling on a highway when he was struck in the right temple by an unknown object. The source of the projectile was never determined, and physicians diagnosed the plaintiff's injury as a possible gunshot wound. The circuit court granted summary disposition in plaintiff's favor. This Court reversed, noting that the "plaintiff's injury was the result of an intentional, reckless, or negligent act where an unknown assailant either shot or threw an object through the rear window of the automobile in which plaintiff was traveling. Injuries resulting from this kind of conduct are not 'within the ordinary risks of driving a motor vehicle.'" *Id.* at 267. Furthermore, "the intent of the unknown assailant is irrelevant. In regard to the no-fault coverage issue, it makes no difference whether the assailant was targeting the vehicle, plaintiff, something else, or nothing at all." *Id.* at 268. Our Supreme Court has also recognized that assaults are not part of the normal risk of operating a vehicle. *Bourne v Farmers Ins Exchange*, 449 Mich 193, 200, n 3; 534 NW2d 491 (1995).

We recognize that previous opinions of this Court have held that personal injury coverage under the no-fault act applies when an assailant targeted the vehicle rather than its occupants. However, we rejected that analysis in *Kennedy, supra*, and therefore reject plaintiff's argument that her injury arose out of her operation of the school bus. Her injury "was the result of an intentional, reckless, or negligent act" of "an unknown assailant." *Id.* at 267. "Injuries resulting from this kind of conduct are not within the ordinary risks of driving a motor vehicle." *Id.* Accordingly, we conclude that the trial court erred in denying summary disposition to defendant because plaintiff could not succeed on her claim as a matter of law. Having reached this conclusion, we do not need to review defendant's argument that the trial court erred in denying defendant summary disposition on the alternative ground that discovery was incomplete.

We affirm the trial court's denial of summary disposition to plaintiff. We reverse the trial court's denial of summary disposition to defendant and remand for entry of judgment in favor of defendant. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Myron H. Wahls

/s/ Hilda R. Gage

/s/ Wesley J. Nykamp