

STATE OF MICHIGAN
COURT OF APPEALS

MARSHA PEREZ,

Plaintiff-Appellant,

v

STC, INC., d/b/a MCDONALD'S and STATE
FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY,

Defendants-Appellees.

UNPUBLISHED

April 12, 2005

No. 250418

Wayne Circuit Court

LC No. 02-229289-NO

Before: Whitbeck, C.J., and Zahra and Owens, JJ.

PER CURIAM.

In this no-fault insurance and premises liability action, plaintiff Marsha Perez appeals as of right orders granting summary disposition in favor of defendants STC Inc, d/b/a McDonald's, and State Farm Mutual Automobile Insurance Company pursuant to MCR 2.116(C)(10). We affirm.

I. Basic Facts And Procedural History

On the evening of November 4, 2001, Perez and her grandson, Michael Webb, arrived at a McDonald's restaurant in the city of Lincoln Park. The weather was dry and cold, and there was no snow or ice on the ground. It was dark when they arrived, and Perez had her headlights on. Perez, who has a handicapped parking sticker because of arthritis in her right foot, parked in a handicapped parking spot near the entrance. Perez did not notice any debris as she pulled into the parking space.

According to Perez, she was out of her car, moving toward its front, and was closing the door when her right foot slipped and she fell. The door was partially open as she started to fall, and she "banged the door shut" as she was falling to the ground. Perez did not remember how many steps she had taken before she fell or if any part of her body hit the car as she fell. Perez did say that shutting the car door was not why she fell, and that she would have fallen even if she had been touching a brick wall. The fall caused Perez to fracture her elbow, which required her to undergo three surgeries. According to Perez, she still has not fully recovered and requires daily medication for pain and inflammation.

Immediately after Perez fell, Webb helped her up, and she went into McDonald's to report the incident. The written incident report reads, "Customer stated she fell up curb, handicapped spot." At her deposition, Perez denied that she told anyone that she fell on the curb. Perez claimed that she did not look at the ground to see what she had slipped on until after she came out of McDonald's, which was approximately fifteen minutes after she fell. Perez stated that she saw ketchup-covered french fries on the ground near the driver's side door of her car that looked like they had been driven over or walked on. Perez later noticed that there was food on her shoe.

Perez went to the emergency room. The registration sheet indicates that Perez "tripped over curb at Lincoln Pk/ arm injury." On November 5, 2001, Perez went to an orthopedic specialist who took her history. The orthopedist's note from that date indicates that Perez "stumbled on cement and fell. She hit her head." Perez, however, denied telling anyone that she stumbled on cement or that she had hit her head. The note was corrected by hand on March 14, 2002, to reflect that Perez slipped on food while stepping out of a car.

Perez filed a complaint alleging that McDonald's breached the duties it owed to her as a business visitor. Specifically, Perez alleged that she was injured as a result of the failure of McDonald's to maintain its parking lot in a safe condition, to remove food from its parking lot, to warn her of the danger posed by the food in the parking lot, and to inspect its parking lot to discover food. Perez also alleged that her injuries arose out of the ownership, operation, maintenance or use of her car,¹ and that State Farm had refused to pay her no-fault benefits in violation of MCL 500.3141.

Both State Farm and McDonald's filed motions for summary disposition pursuant to MCR 2.116(C)(10), which the trial court granted. In granting McDonald's motion, the trial court stated, "I don't think there's anything that would show from what's been presented [to] me that there was either actual or constructive notice of this food. The food could have been smashed up within a matter of seconds or minutes before Ms. Perez arrived on the scene" In granting State Farm's motion, the trial court found, as a matter of law, that if the use of the car was unrelated to the injury, PIP payments are not triggered. The trial court stated, "[I]n this case, the plaintiff herself has clearly testified that her hand on the door or the act of shutting the door had nothing to do with her fall, whether it be on food or any other item."

II. State Farm's Motion

A. Standard Of Review

Perez argues that the trial court erred in granting State Farm's motion for summary disposition because she was using her car for a transportational function and alighting from it at the time of her injury. Therefore, Perez maintains, Michigan's no-fault act requires that State Farm provide personal injury protection (PIP) benefits. We review de novo a trial court's

¹ MCL 500.3106.

decision on a motion for summary disposition.² A summary disposition motion brought under MCR 2.116(C)(10) is properly granted when the trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the non-moving party and determines that no genuine issue of material fact exists.³

B. MCL 500.3105(1)

The starting point for analysis under Michigan's no-fault insurance act is MCL 500.3105(1), which provides that coverage is required for an injury "arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" The first step in the analysis is to determine whether the injury arises out of the use of a motor vehicle as a motor vehicle.⁴ The second step is to determine whether coverage for such an injury is excluded under another provision of the no-fault act and whether there is an exception to that exclusion.⁵

We conclude that Perez's injury does not satisfy the first step of the no-fault coverage analysis. To arise out of the use of a motor vehicle as a motor vehicle, "an injury [must] be closely associated with the transportational function of a vehicle before coverage is triggered"⁶ Here, the injury did not arise out of the use of a motor vehicle as a motor vehicle because the injury was not related to the transportational function of plaintiff's car.⁷ Perez argues that because she had driven to McDonald's and was shutting the car door when she slipped and fell, the injury was related to the use of the motor vehicle as a motor vehicle. However, her own testimony indicates that closing the door had nothing to do with her fall. Therefore, the injury did not arise out of the use of her car as a motor vehicle. The trial court properly granted State Farm's motion for summary disposition on that basis.

Perez's claim also fails to satisfy the second step of the no-fault analysis because she was not "alighting from" her car when she fell. To recover no-fault benefits for injuries sustained while a vehicle is parked, a claimant must suffer injuries falling within an exception set out in MCL 500.3106(1), which includes an injury "sustained by a person while occupying, entering into, or alighting from the vehicle."⁸ Perez argues that because she was closing the car door when she fell, she was still in the process of "alighting from" her car.

² *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

³ *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Payne v Farm Bureau Ins*, 263 Mich App 521, 525; 688 NW2d 327 (2004).

⁴ *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 33; 651 NW2d 188 (2002).

⁵ *Id.*

⁶ *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 220; 580 NW2d 424 (1998).

⁷ See *Morosini v Citizens Ins Co*, 461 Mich 303, 311; 602 NW2d 828 (1999); *McKenzie*, *supra* at 220.

⁸ MCL 500.3106(1)(c).

There is no statutory definition for the term “alighting.” The *Random House Webster’s College Dictionary* (1997) defines “alight” as “to descend from a vehicle.” Undefined statutory terms are given their plain and ordinary meanings.⁹ Consulting a dictionary is appropriate to determine the plain and ordinary meaning of a word.¹⁰ This Court has previously considered the term “alighting from” for purposes of no-fault coverage. An individual has not finished alighting from a vehicle at least until both feet are firmly planted on the ground.¹¹ In *Harkins v State Farm Mut Automobile Ins Co*,¹² this Court found that the plaintiff was not entitled to no-fault benefits under MCL 500.3106 because, before he sustained the injury, he had completed the process of alighting by physically leaving the confines of and walking away from his car.

Here, Smith stated that when she slipped, “I was out of my car starting to walk.” She also affirmed that the slip occurred at some point after she was out of her car, with both feet on the ground, as she was shutting the car door. Because Smith sustained the injury after she had successfully removed herself from the confines of her car and had planted both feet on the ground, she was not alighting from the car within the meaning of § 3106(1)(c) when the injury occurred. Thus, she is not eligible for no-fault benefits.

III. McDonald’s Motion

A. Standard Of Review

Perez argues that the trial court erred in granting McDonald’s motion for summary disposition. Specifically, she argues that she presented sufficient evidence to allow a jury to infer that McDonald’s had constructive notice of the food in its parking lot. As stated above, we review de novo a trial court’s decision on a motion for summary disposition.¹³

B. Premises Liability

It is well established that a possessor of land is not an absolute insurer of the safety of an invitee.¹⁴ An invitor owes an invitee a duty to inspect the premises and make any necessary repairs or warn of discovered hazards.¹⁵ An invitor’s liability must arise from active negligence, through an omission or unreasonable act, or through a condition of which the invitor knew or a condition of such a character or duration that the invitor should have known about it.¹⁶ Whether

⁹ *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

¹⁰ *Id.*

¹¹ *Kreuger v Lumbermen’s Mut Cas Co*, 112 Mich App 511, 515; 316 NW2d 474 (1982).

¹² *Harkins v State Farm Mut Automobile Ins Co*, 149 Mich App 98, 101; 385 NW2d 741 (1986)

¹³ *Dressel, supra* at 561.

¹⁴ *Anderson v Weigand*, 223 Mich App 549, 554; 567 NW2d 452 (1997).

¹⁵ *James v Alberts*, 464 Mich 12, 19-20; 626 NW2d 158 (2001).

¹⁶ *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001).

an invitor owes a duty to an invitee depends on whether the invitor had actual or constructive notice of the hazardous condition.¹⁷

Here, because no evidence exists that McDonald's or its employees caused the hazard or had actual knowledge of it, Perez had to show that McDonald's should have known about the food in the parking lot.¹⁸ Notice may be inferred from evidence that the hazard existed long enough that a prudent invitor would have discovered it.¹⁹ When no evidence is presented to show that the condition had existed for a considerable time, summary disposition for the invitor is proper.²⁰ In *Clark*, the Michigan Supreme Court found that evidence showing that a hazard had been present for about an hour before the plaintiff fell establishes a sufficient length of time from which a jury could infer constructive notice.²¹

Perez argues that the trial court erred in granting McDonald's' motion for summary disposition because she presented sufficient evidence to establish a factual dispute regarding how long the food was in the parking lot. She contends that the facts that (1) the food was smashed when she saw it, as if driven over or walked on, and (2) she had parked in a handicapped parking space, which are seldom used, provide enough evidence for a jury to infer that McDonald's had constructive notice of the hazard.

We note that Perez admitted in her deposition that she had no idea how long the food had been on the ground. She further stated that she did not see debris on the ground when she pulled into the parking spot or when she fell, and that she first saw the food fifteen minutes after the accident when she returned to her car after reporting the fall. Perez did not present any evidence regarding the frequency of use of handicapped parking spaces. In contrast, McDonald's presented the pre-shift checklist showing that its employees had inspected the lot within an hour of the accident.

We therefore hold that the trial court did not err in concluding that McDonald's neither knew nor should have known about the food in the parking lot. Accordingly, the trial court properly granted McDonald's' motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Donald S. Owens

¹⁷ *Id.*

¹⁸ *Clark, supra* at 420.

¹⁹ *Id.* at 419, citing *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968).

²⁰ *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 8; 279 NW2d 318 (1979).

²¹ *Clark, supra* at 420.