

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY J. WHITE,
Plaintiff-Appellant,

UNPUBLISHED
June 15, 2010

v

No. 291144
Jackson Circuit Court
LC No. 08-003665-NF

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

Defendant-Appellee,

and

BRIAN SCOTT WILLIAMS,

Defendant.

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Plaintiff Timothy J. White appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owned a motor vehicle that was registered in this state but was not insured. Defendant Brian Williams stole the vehicle when it was parked at a residence in the early morning. Plaintiff reported the theft and then began looking for his vehicle.¹ He found the vehicle several miles away at a gas station. When he reached inside the vehicle to confront Williams and take the keys, Williams drove off at a great rate of speed, with plaintiff's body hanging from the vehicle window. Plaintiff was dragged over a mile and suffered abrasions and burns to his feet and legs. Eventually, Williams stopped the vehicle and tried to flee, but police officers apprehended him.

¹ This was the second time in a month that this vehicle had been stolen from the same address. The first time, the vehicle was recovered but not the keys, and plaintiff never learned who stole the vehicle.

Plaintiff sought personal injury protection (PIP) benefits under a no-fault policy that his wife purchased from defendant. Although plaintiff and his wife were legally married, they were separated and no longer resided in the same household. Defendant denied the claim, and plaintiff sued. The trial court granted defendant's motion for summary disposition, finding that plaintiff could not receive PIP benefits pursuant to MCL 500.3113(b) because he was the owner of the uninsured motor vehicle.²

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Evidence submitted by the parties must be viewed in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). However, the non-moving party "must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994), quoting *Durant v Stahlin*, 375 Mich 628, 640; 135 NW2d 392 (1965).

MCL 500.3101(1) reads:

The 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, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved upon a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

The relevant exclusion, MCL 500.3113, provides:

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

* * *

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

The parties do not dispute that plaintiff would potentially have been covered under his wife's policy had he been injured by someone else's vehicle. It also appears that the wife's

² The trial court determined that plaintiff's claim for benefits under the policy issued to his wife was also precluded because plaintiff was not living in his wife's household at the time of the accident.

policy is the only potential coverage available to plaintiff. The only question is whether plaintiff was required to maintain insurance on his vehicle in order to be entitled to PIP coverage.

The parties have failed to identify any facts supporting plaintiff's argument that he was not required to insure his vehicle. The vehicle was being driven on a public highway at the time of the accident. Although plaintiff maintains that he did not maintain insurance on the vehicle because he did not intend to drive it and it is undisputed that plaintiff was injured when trying to recover his vehicle from a thief, the statute does not permit our consideration of plaintiff's intent or of surrounding circumstances when determining whether plaintiff is entitled to PIP coverage. Plaintiff was required to insure his vehicle under MCL 500.3101(1), and because he failed to do so, he is not entitled to PIP benefits pursuant to MCL 500.3113.³

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot

³ We sympathize with the unfortunate situation that plaintiff has found himself in. However, the applicable statutes are clear, and “[t]he judicial function is to apply statutes as they are written, not in a manner which to the Court seems more equitable than the Legislature provided.” *In re Certified Question (Ford Motor Co v Lumbermens Mut Cas Co)*, 413 Mich 22, 51; 319 NW2d 320 (1982) (RYAN, J., dissenting).