

STATE OF MICHIGAN
COURT OF APPEALS

GORDIE RUSS,

Plaintiff-Appellant,

v

MICHIGAN ASSIGNED CLAIMS FACILITY,

Defendant-Appellee.

UNPUBLISHED
October 10, 2017

No. 334565
Wayne Circuit Court
LC No. 15-012729-NF

Before: TALBOT, C.J., and O'CONNELL and O'BRIEN, JJ.

PER CURIAM.

Plaintiff, Gordie Russ, sought personal protection insurance (PIP) benefits from defendant, Michigan Assigned Claims Facility (MACF). MACF denied benefits. Russ filed suit, alleging that MACF breached their statutory obligation to provide Russ PIP benefits, seeking a determination regarding the applicability of the no-fault act, MCL 500.3101 *et seq.*, and seeking a determination of the amount of benefits MACF owed Russ. MACF moved for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). The trial court entered an order granting MACF's motion. Russ appeals as of right. We affirm.

I. FACTUAL BACKGROUND

Russ drove his vehicle to his fiancée Deborah Ali's home in Detroit, parked in front of the house, and spoke to Ali. Then, another vehicle rear-ended Russ's vehicle. Russ asserted that he sustained injury as a result of the accident.

Russ testified that he registered his car in Michigan. However, Russ testified that "at the time of the accident, [he] was in between moving from Michigan to . . . Phoenix, Arizona." Therefore, Russ explained that he obtained an Arizona car insurance policy through GEICO.

Russ filed a claim with GEICO. However, GEICO denied his claim, explaining that Russ had no "medical payments coverage under [his] Arizona policy" and that Russ's vehicle "would not qualify for roll on Michigan coverage per the no fault [sic] statute" MCL 500.3102 because his vehicle had "been in Michigan more than 30 days in the past year."

Russ then sought PIP benefits through MACF. However, MACF determined that Russ was not entitled to PIP benefits because he did not have Michigan no-fault insurance as required by MCL 500.3101(1).

Russ sued MACF. MACF moved for summary disposition, arguing that Russ failed to maintain PIP coverage in his GEICO policy, contrary MCL 500.3101(1)'s requirement. In response, Russ argued that MCL 500.3113 did not bar his PIP claim because the accident occurred when his vehicle was parked, and MCL 500.3113 and MCL 500.3101(1) only apply to accidents occurring when a motor vehicle is being driven or moved on a highway.

The trial court granted MACF's motion and dismissed Russ's claims with prejudice, determining that Russ failed to maintain the insurance required by the no-fault act and that Russ was not excused from the insurance requirement because the accident occurred at a "moment [that] he wasn't operating the vehicle on the highway."

II. STANDARD OF REVIEW

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The moving party must specify issues for which there is no genuine issue of material fact and support the motion. MCR 2.116(G)(4). The nonmoving party has the burden to provide evidence of a genuine issue of material fact. MCR 2.116(G)(4). Then, a "trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion." *Maiden*, 461 Mich at 120. A trial court must grant the motion if it finds "no genuine issue as to any material fact" and determines that "the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). We review a trial court's order granting summary disposition de novo. See *Maiden*, 461 Mich at 118.

Likewise, we review de novo whether the trial court properly interpreted and applied the no-fault act. See *Farmers Ins Exch v AAA of Mich*, 256 Mich App 691, 694-695; 671 NW2d 89 (2003). When interpreting a statute, we aim to determine the Legislature's intent by first examining the statute's plain language. *Fellows v Mich Comm for the Blind*, 305 Mich App 289, 297; 854 NW2d 482 (2014). If a statute is unambiguous, we enforce it as written. *Id.*

III. ANALYSIS

The trial court did not err in granting MACF's motion for summary disposition because Russ failed to maintain PIP insurance required by the no-fault act.

"Under personal protection insurance 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). A portion of the chapter, MCL 500.3113, excludes persons from PIP benefits. MCL 500.3113(1)(b) provides that a "person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident" "[t]he person was the . . . registrant of a motor vehicle . . . involved in the accident with respect to which the security required by [MCL 500.3101] . . . was not in effect." Pursuant to MCL 500.3101(1), the "registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance . . . during the period the motor vehicle is driven or moved on a highway." MCL 257.216 explains when vehicles must be registered in Michigan, stating that "[e]very motor

vehicle . . . when driven or moved on a street or highway, is subject to the registration . . . provisions of this act.”¹ Therefore, a person may not recover PIP benefits if he was the “registrant of [a] vehicle involved in [an] accident, and the security required by [MCL 500.3101] . . . was not in effect with respect to that vehicle.” *Wilson v League Gen Ins Co*, 195 Mich App 705, 707-708; 491 NW2d 642 (1992).

In this case, MCL 257.216 required Russ to register his vehicle in Michigan because he drove or moved it on Michigan streets or highways. Russ bought his vehicle in August 2013. As of the date of the accident, Russ worked three jobs in Michigan and stayed at one of two homes in Michigan. Additionally, he drove his vehicle to a home in Michigan just before the accident. Therefore, Russ was required to maintain PIP insurance “during the period the motor vehicle is driven or moved on a highway.” See MCL 500.3101(1). The only car insurance identified in the record is Russ’s Arizona car insurance policy with GEICO. The GEICO policy did not cover PIP benefits. Therefore, Russ did not comply with MCL 500.3101’s security requirement. Thus, he was not entitled to PIP benefits. See MCL 500.3113(1)(b).

We reject Russ’s argument that he was not required to have PIP insurance because his vehicle was in park at the time of the accident. Russ cites *Shinn v Mich Assigned Claims Facility*, 314 Mich App 765; 887 NW2d 635 (2016), which interpreted MCL 500.3113(b) and determined that an individual was not required to have PIP insurance at the time she was in an accident involving her parked car. However, *Shinn* is distinguishable. The Court determined that the current version of MCL 500.3113(b) does not require continuous coverage regardless of whether a vehicle is being driven or parked. *Shinn*, 314 Mich App at 774. The Court applied this rule to a specific factual context: an individual had her uninsured vehicle repaired, then moved her vehicle to another location, then parked her vehicle, and then was involved in an accident “several days” later. *Id.*, 767-775. Accordingly, the *Shinn* Court specifically “agree[d] with [the] plaintiff’s argument that security was not required at th[e] time” of the accident “[b]ecause any driving or movement on a highway was completed several days before the accident.” *Id.* at 774-775.² This statutory interpretation and application aligns with the Court’s

¹ MCL 257.216 lists exceptions to this rule, but none apply here.

² Contrary to MACF’s argument, we also conclude that *Shinn* does not conflict with *Wilson*, 195 Mich App at 705. The two cases analyzed different issues and different factual scenarios. The *Shinn* Court analyzed whether a vehicle owner must maintain security for payment of PIP benefits when her vehicle was not being driven or moved on a highway for a period of several days during and following repair. 314 Mich App at 767-775. In *Wilson*, the vehicle owner was a college student in Texas who sought no-fault benefits under MCL 500.3111 as a resident relative of her mother, who lived in Michigan and had a Michigan no-fault policy. 195 Mich App at 706-707. The college student argued that she was not subject to Michigan registration and insurance requirements because she did not operate her vehicle on Michigan highways. *Id.* at 708. The *Wilson* Court analyzed MCL 500.3101 and MCL 500.3113(b) and rejected the student’s argument, determining that the student was “precluded from recovery” of PIP benefits if she “was the owner or registrant of the vehicle involved in the accident, and the security required by

decision in *MEEMIC Ins Co v Mich Millers Mut Ins*, 313 Mich App 94, 96-100; 880 NW2d 327 (2015), determining that a person need not maintain security for PIP benefits when he placed his vehicle in a storage facility and did not drive it in over a year.

Russ’s vehicle had no similar period of immobility during which it was not driven or moved on a Michigan highway. Rather, Russ drove to Ali’s home in Michigan, placed the vehicle in park, and then the accident occurred. Further, interpreting the no-fault act as Russ suggests—that a vehicle must maintain security for PIP benefits when it is driving or moving on a Michigan roadway but need not maintain the security once the driver shifts the vehicle into park—would be an absurd result, and we must construe statutes “to prevent absurd results.” *People v Pinkney*, 316 Mich App 450, 464; 891 NW2d 891 (2016) (quotations and citations omitted).

Because we conclude, as the trial court did, that Russ is ineligible for PIP benefits, we need not consider his other arguments on appeal.

We affirm.

/s/ Michael J. Talbot
/s/ Peter D. O’Connell
/s/ Colleen A. O’Brien

[MCL 500.3101] . . . was not in effect with respect to that vehicle.” *Id.* at 707-708. Therefore, the cases do not conflict, and we need not convene a conflict panel.