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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Court of Appeals rules that it is a jury question as to whether an injured party intended not only the act, but to cause injury to himself

By Meghan K. Connolly

In the unpublished opinion of *Van Tiem v Auto Club Group,* 2014 Mich. App. LEXIS 2528 (released December 18, 2014), the Court of Appeals addressed the issue of whether there was a question of fact as to whether the plaintiff, Jared Van Tiem, had intentionally caused injury to himself when he jumped from a moving vehicle.

MCL 500.3105 requires that a person suffer from "accidental bodily injury" in order to qualify for PIP benefits under the No-Fault Statute. In defining what an "accidental bodily injury" is, MCL 500.3105(4) states:

> Bodily injury is accidental as to a person claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person including himself.

The courts have historically held that there is a two-part test as to whether a person acted intentionally. The injured person must intend both the act and the injury. *Miller v Farm Bureau Mut Ins Co,* 218 Mich App 221, 226 (1996). This test is generally fact-specific, though the Court of Appeals and Supreme Court have given some guidance as to factors to consider when determining whether a person had intent to injure himself. Some factors to consider include events leading up to the accident, whether the injured party had any overt suicidal intent, whether the injured party was intoxicated, and whether the injured party did anything to try and prevent injury. "[E]ven in those cases utilizing a subjective test of intention, where the injury or resulting death is the natural, anticipated and expected result of an intentional act, courts may presume that both act and result are intended." *Van Tiem,* unpub op at 4, citing *Mattson v Farmers Ins Exch,* 181 Mich App 419, 424 (1989).

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This unpublished opinion by the Court of Appeals is not binding on future cases. The inquiry whether an injured party intended both the act and injury is fact-specific to each case. In determining an injured party's subjective intent, the parties may infer the intent from facts and circumstantial evidence, and not just direct evidence of the injured party's state of mind. This does not mean that just because injury is a foreseeable result, the injured party had the subjective intent to injure himself.

Knowing the consequence of the act may be one factor used to determine the injured party's subjective intent. Facts regarding the injured party's state of mind, facts leading up to the incident, whether the injured party had any suicidal ideations, the party's level of intoxication, and whether any evasive actions were taken to try to prevent injury or death may all be considered in determining whether the act was intentional and whether the party intended injury.

In the instant case, Plaintiff was riding in his girlfriend's van after leaving a party where Plaintiff had been drinking. The plaintiff and his girlfriend, Ashley MacDermaid, began fighting in the van about their relationship. MacDermaid stopped her van in front of a bar at one point to continue fighting, but was asked to leave the parking lot, so she continued driving. At one point, MacDermaid stated that Plaintiff "was just full out yelling," at which point she pulled her van over, stopped, and asked Plaintiff to get out of the van. Plaintiff refused to get out of the van, so MacDermaid began to drive again. Once the vehicle was moving, Plainitff "leapt" from the van and sustained a head injury.

MacDermaid noted in her deposition that Plaintiff did not do anything before jumping from the vehicle, such as trying to protect himself by tucking or rolling. Additionally, MacDermaid testified that before the incident, Plaintiff would get upset and cut his arm. MacDermaid took Plaintiff to his brother's house, and he was later taken to the hospital. At that time, he had a .19 BAC.

Defendant denied Plaintiff's PIP claim, finding that he did not qualify under MCL 500.3105(1) because his injuries were intentionally self-inflicted. This precipitated this lawsuit. Plaintiff moved for partial summary disposition on the grounds that there was no material question of fact regarding plaintiff's intent to cause himself injury, and because the injury was accidental, Defendant owed PIP benefits. The trial court granted Plaintiff's motion for partial summary disposition, and Defendant filed this appeal.

Plaintiff attempted to argue that he did not intend to injure himself, citing the fact that he made no verbal intent, and the fact that he was intoxicated at the time, making this simply a "stupid drunk act." The Court of Appeals found that while there was no question that Plaintiff intended to jump from the moving vehicle, there was a question as to whether he intended to injure himself. In support of this, the Court pointed out that leading up to the accident, Plaintiff had been fighting with his girlfriend to the point that he was yelling, he declined the opportunity to get out of the van when MacDermaid brought it to a stop and asked him to exit, he took no evasive action to prevent injury to himself once he had jumped, and MacDermaid had testified that Plaintiff had a history of self-inflicted injuries.

The trial court's grant of summary disposition was reversed, and the case was remanded for further proceedings.

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