

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2017-CA-000320-MR

MARK MICATROTTO

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE ERNESTO M. SCORSONE, JUDGE  
ACTION NO. 16-CI-02769

GRANGE MUTUAL CASUALTY COMPANY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, JOHNSON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Mark Micatrotto brings this appeal from a February 7, 2017, Order of the Fayette Circuit Court granting summary judgment in favor of Grange Mutual Casualty Company and dismissing Micatrotto's complaint. We affirm.

Micatrotto was employed by Motorvation Motor Cars as a vehicle salesman on its car lot in Lexington, Kentucky. On or about August 1, 2014, while

at work on the car lot, Micatrotto alleges he had to jump out of the path of an automobile that was backing up on the lot. As a result, he tripped on the curb and suffered a physical injury. The automobile was apparently being driven by an unknown customer with an unidentified salesperson riding as a passenger. Micatrotto conceded that the automobile made no physical contact with him. Micatrotto sought payment of Basic Reparation Benefits (BRB) from Grange Mutual. Grange Mutual provided Motorvation with motor vehicle insurance coverage on its fleet of automobiles. Grange Mutual denied Micatrotto's claim for BRB.

In July of 2016, Micatrotto filed a complaint in the Fayette Circuit Court against Grange Mutual. He alleged that Grange Mutual improperly denied payment of BRB and sought to recover \$10,000, representing the limit of BRB coverage provided under Motorvation insurance policy.

Grange Mutual answered and subsequently filed a motion for summary judgment. In the motion, Grange Mutual argued that Micatrotto was not entitled to BRB. Grange Mutual maintained that as a pedestrian Micatrotto was only entitled to BRB if he was physically struck by a motor vehicle per Kentucky Revised Statutes (KRS) 304.39-050(1). As it was uncontroverted that Micatrotto was not physically struck by the automobile, Grange Mutual asserted that Micatrotto was plainly not entitled to BRB. In his response to the motion for

summary judgment, Micatrotto claimed that his injury was caused by the use of a covered automobile; thus, he was entitled to BRB.

On February 7, 2017, the circuit court granted Grange Mutual's motion for summary judgment and dismissed Micatrotto's complaint. This appeal follows.

Micatrotto contends that the circuit court erroneously rendered summary judgment. Specifically, Micatrotto argues that he was entitled to BRB because his injury was caused by the use of an automobile. And, he asserts that there is no statutory requirement of physical contact with an automobile to be entitled to BRB as a pedestrian.

Our review of a summary judgment is *de novo*. See *Lewis v. B & R Corp.*, 56 S.W.3d 432 (Ky. App. 2001). Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). The material facts of this appeal are undisputed and resolution centers upon application and interpretation of certain provisions of the Motor Vehicle Reparations Act (KRS Chapter 304.39).

When interpreting a statute, we are bound to give terms their usual and customary meaning. *Gateway Const. Co. v. Wallbaum*, 356 S.W.2d 247 (Ky. 1962). And, if a term has been expressly defined by legislative enactment, such

definition must be utilized by the court. *Griffin v. City of Robards*, 990 S.W.2d 634 (Ky. 1999). Our review proceeds accordingly.

KRS 304.39-030(1) broadly declares that any person who suffered an injury “arising out of maintenance or use of a motor vehicle” is entitled to BRB if the accident occurred in Kentucky. The phrase “use of a motor vehicle” is defined as any “utilization” of a motor vehicle “including occupying, entering into, and alighting from it” per KRS 304.39-020(6). And, KRS 304.39-050(1) specifies that “if the injured person is a pedestrian, the security covering the vehicle which struck such pedestrian” is responsible for BRB. A pedestrian is defined as “any person who is not making ‘use of a motor vehicle’ at the time his injury occurs” under KRS 304.39-050(1).

At the time of Micatrotto’s injury, it is clear from the record below that he was “not making ‘use of a motor vehicle’” under KRS 304.39-050(1). Micatrotto was not occupying, entering, riding, driving, or alighting from a motor vehicle. KRS 304.39-020(6).<sup>1</sup> Rather, under the uncontroverted facts, Micatrotto was a pedestrian per KRS 304.39-050(1). As a pedestrian, Micatrotto is entitled to BRB from the insurance carrier of the motor vehicle that “struck” him. However,

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<sup>1</sup> Mark Micatrotto cites *Kentucky Farm Bureau Mutual Insurance Company v. Hall*, 807 S.W.2d 954 (Ky. App. 1991), as support for his entitlement to Basic Reparation Benefits (BRB). *Hall* is, however, clearly distinguishable. In *Hall*, the claimant was driving a motor vehicle when injured by a rock thrown from a lawn mower. *Id.* Thus, Hall was entitled to BRB as her injury was directly related to her use of a motor vehicle. *Id.* In this case, Micatrotto was not using a motor vehicle but was a pedestrian.

Micatrotto was not struck by the automobile; rather, his injuries were due solely to his efforts to escape from the path of the automobile. The automobile never made physical contact with Micatrotto.

Considering the statutory language set out in KRS 304.39-050(1), we believe that a pedestrian must be struck by a motor vehicle in order to be entitled to BRB.<sup>2</sup> As Micatrotto was not struck by the automobile, he is not entitled to BRB as a pedestrian.

In sum, we conclude that the circuit court properly rendered summary judgment dismissing Micatrotto's claims against Grange Mutual.

For the foregoing reasons, the Order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Kenneth B. Fouts II  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Melissa Thompson Richardson  
Joshua J. Leckrone  
Matthew P. Dearmond  
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<sup>2</sup> Although no published authority exists upon this precise issue, we note that the Court of Appeals for the Sixth Circuit stated that the "relevant provisions of the [Motor Vehicle Reparations] Act [in Kentucky] strongly suggests that the pedestrian must be struck by a vehicle." *Brotherton v. Map Enterprises, Inc.*, 104 F.3d 361 (6th Cir. 1996) (Unpublished Opinion). This issue is in need of clarification by the Kentucky Supreme Court.