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122 Mich.App. 418 (Mich.App. 1983)

333 N.W.2d 67

William L. FISHER, Plaintiff-Appellant,

v.

**Karen LOWE, Larry Moffet and State Farm Mutual
Automobile**

Insurance Company, Defendants-Appellees.

Docket No. 60732.

Court of Appeals of Michigan.

January 10, 1983

Submitted Nov. 3, 1982.

Released for Publications May 6, 1983.

A wayward Chevy struck a tree

Whose owner sued defendants three.

He sued car's owner, driver too,

And insurer for what was due

For his oak tree that now may bear

A lasting need for tender care.

The Oakland County Circuit Court,

John N. O'Brien, J., set forth

The judgment that defendants sought

And quickly an appeal was brought.

Court of Appeals, J.H. Gillis, J.,

Gave thought and then had this to say:

1) There is no liability

Since No-Fault grants immunity;

2) No jurisdiction can be found

Where process service is unsound;

And thus the judgment, as it's termed,

Is due to be, and is,

William L. Fisher, Troy, in pro. per.

Romain, Donofrio & Kuck, P.C. by Ernst W. Kuck,
Southfield, for defendants-appellees.

Before BRONSON, P.J., and V.J. BRENNAN and
J.H. GILLIS, JJ.

J.H. GILLIS, Judge.

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We thought that we would never see

A suit to compensate a tree.

A suit whose claim in tort is prest

Upon a mangled tree's behest;

A tree whose battered trunk was prest

Against a Chevy's crumpled crest;

A tree that faces each new day

With bark and limb in disarray;

A tree that may forever bear

A lasting need for tender care.

Flora lovers though we three,

We must uphold the court's decree.

Affirmed. [1]

Notes:

[1] Plaintiff commenced this action in tort against defendants Lowe and Moffet for damage to his "beautiful oak tree" caused when defendant Lowe struck it while operating defendant Moffet's automobile. The trial court granted summary judgment in favor of defendants pursuant to GCR 1963, 117.2(1). In addition, the trial court denied plaintiff's request to enter a default judgment against the insurer of the automobile, defendant State Farm Mutual Automobile Insurance Company. Plaintiff appeals as of right.

The trial court did not err in granting summary judgment in favor of defendants Lowe and Moffet. Defendants were immune from tort liability for damage to the tree pursuant to § 3135 of the no-fault insurance act. M.C.L. § 500.3135; M.S.A. § 24.13135.

The trial court did not err in refusing to enter a default judgment against State Farm. Since it is undisputed that

plaintiff did not serve process upon State Farm in accordance with the court rules, the court did not obtain personal jurisdiction over the insurer. GCR 1963, 105.4.
