NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3471-21

DAVID GOYCO,

Plaintiff-Appellant,

v.

PROGRESSIVE INSURANCE COMPANY,

Defendant-Respondent.

———————————————————

Argued June 7, 2023 – Decided July 5, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-0472-22.

Christian C. LoPiano argued the cause for appellant (LoPiano Law Firm, attorneys; Christian LoPiano, of counsel and on the briefs).

Allison L. Silverstein argued the cause for respondent (Vella & Maren, attorneys; Allison L. Silverstein, on the brief).

PER CURIAM

This matter arises from an accident in which an automobile struck plaintiff while he was operating a low-speed electric scooter ("LSES"). Plaintiff David Goyco appeals from a June 6, 2022 order, which determined that plaintiff was not a pedestrian, as defined by N.J.S.A. 39:6A-2(h), and was, therefore, denied personal injury protection (PIP) benefits by defendant, Progressive Insurance Company. We affirm, substantially for the reasons set forth in Judge John G. Hudak's statement of reasons.

On November 22, 2021, plaintiff was operating a Segway Ninebot KickScooter Max[1] when he was struck by an automobile on West Grand Street in Elizabeth. As a result of the accident, plaintiff sustained injuries and incurred medical expenses for his treatments.

The scooter operated by plaintiff was an LSES, as defined by N.J.S.A. 39:1-1:

> "Low-speed electric scooter" means a scooter with a floorboard that can be stood upon by the operator, with handlebars, and an electric motor that is capable of propelling the device with or without human propulsion at a maximum speed of less than 19 miles per hour.

[1] The Segway Ninebot KickScooter Max has a maximum speed of 15.5 miles per hour.

At the time of the accident, plaintiff was insured under an automobile insurance policy issued by defendant. The policy provided No-Fault Benefits Coverage ("NFBC") pursuant to N.J.S.A. 39:6A-4.[2]

On November 22, 2021, plaintiff filed a claim with defendant for PIP benefits. By letter dated December 23, 2021, defendant denied plaintiff's claim, stating:

> Unfortunately, you are ineligible for P.I.P. benefits under this policy, as outlined below.
>
> New Jersey No-Fault benefits are only available if the accident involves a qualifying automobile. The Segway Ninebot Scooter you were occupying at the time of the accident does not meet the definition of a qualifying automobile pursuant to [N.J.S.A.] 39:6A-2(a) of the New Jersey Auto Insurance Law. Therefore, New Jersey No-Fault benefits are denied.

---

[2] N.J.S.A. 39:6A-4, "Personal injury protection coverage, regardless of fault," provides the following:

> [E]very standard automobile liability insurance policy issued or renewed on or after the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall contain [PIP] benefits for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile. . . .
>
> [N.J.S.A. 39:6A-4.]

> Furthermore, pursuant to N.J.S.A. 39:6A-2(h) of the New Jersey Auto Insurance Law, the Segway Ninebot Scooter you were occupying at the time of the accident disqualifies you from meeting the definition of a pedestrian as "pedestrian" is defined as "any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks."

On February 15, 2022, plaintiff filed a complaint and order to show cause to challenge the denial. On May 6, 2022, oral argument was held before Judge John G. Hudak. There, plaintiff began by noting that New Jersey law recognizes bicyclists as pedestrians for purpose of no-fault coverage. See Darel v. Pennsylvania Mfgrs. Ass'n Ins. Co., 114 N.J. 416, 419 (1989); Harbold v. Olin, 287 N.J. Super. 35, 39 (App. Div. 1996) ("A person riding a bicycle is considered a pedestrian for purposes of our State automobile insurance laws."). Plaintiff then argued that, by extension, an LSES should be considered the equivalent of a bicycle pursuant to N.J.S.A. 39:4-14.16(g), which provides:

> Except as otherwise provided by this section, all statutes, including the provisions of chapter 4 of Title 39 of the Revised Statutes, rules, and regulations applicable to bicycles, . . . shall apply to low-speed electric bicycles and [LSES], except those provisions which by their very nature may have no application to low-speed electric bicycles or low-speed electric scooters.
>
> [N.J.S.A. 39:4-14.16(g).]

On June 6, 2022, Judge Hudak entered an order denying plaintiff's application and dismissing the complaint. In so doing, the judge reasoned:

> Here, [p]laintiff was operating a scooter powered by motor at the time of the incident. As the scooter is clearly not considered a motor vehicle[,] neither in statute nor in the insurance policy, it must be determined if plaintiff would be considered a pedestrian. Plaintiff asserts that under N.J.S.A. 39:4-14.16(g), "all statutes, [] rules and regulations applicable to bicycles [] shall apply to low-speed electric bicycles and low-speed electric scooters []" NJ.S.A. 39:4-14.l6(g). This reasoning is misplaced as N.J.S.A. 39:4-14.16(g) is not a part of the No-Fault statute and is not controlling over N.J.S.A 39:6A-2(h), et. seq. Further, the No-Fault Statute, N.J.S.A. 39:6A-4 contains zero reference to "bicycles," but rather defines what constitutes a "Pedestrian" for purposes of the No-Fault Statute.
>
> The plain language and nature of the definition of a "pedestrian" in accordance with N.J.S.A. 39:6A-4 clearly has no application to [an LSES]. Further, as noted, this statute also fails to even reference "bicycles." These uncontroverted facts clearly exclude Plaintiff from the definition of a "pedestrian" under NJ.S.A. 39:6A-2(h). Under N.J.S.A. 39:6A-2(h), "any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks." Muscular power being the operative phrase in this statute. . . . [T]he plain meaning of the statute leads this [c]ourt to find that the [LSES] does not fall under the statute allowing for PIP coverage. The [LSES] was not muscular powered thus [does] not meet[] the requirements of the statute. If the Legislature intended to amend the statute to include low-powered bicycles

> and scooters they would have done so. Therefore, Plaintiff is not entitled to recovery of PIP benefits under N.J.S.A. 39:6A-4 since he does not qualify under any of the categories of coverage.

On appeal, plaintiff raises the following arguments for our review:

> POINT I
>
> THE TRIAL COURT FAILED TO ENFORCE THE PLAIN LANGUAGE OF N.J.S.A 39:4-14.16(g) – OPERATION OF LOW[-]SPEED ELECTRIC BICYCLE OR SCOOTER, UNLAWFULLY DENYING PLAINTIFF THE RIGHT TO RECEIVE NFBC UNDER HIS AUTO POLICY IN VIOLATION OF WELL-ESTABLISHED LAW.
>
> POINT II
>
> THE TRIAL COURT'S BASIS AND REASONING TO DENY PLAINTIFF NFBC ARE FLAWED AS THE TRIAL COURT MISINTERPRETED THE PLAIN MEANING OF THE STATUTE CONTRARY TO WELL-ESTABLISHED LAW.

We review de novo the trial court's rulings of law and issues regarding the applicability, validity, or interpretation of laws and statutes. Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019); State v. Fuqua, 234 N.J. 583, 591 (2018). "In interpreting a legislative enactment, the starting point is the language of the statute itself. If the language is clear, 'the sole function of the courts is to enforce it according to its terms.'" Velazquez v. Jiminez, 172 N.J. 240, 256 (2002) (quoting Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387, 392

(2001)). Only when statutory language is ambiguous, or "leads to more than one plausible interpretation," do we "turn to extrinsic evidence, 'including legislative history, committee reports, and contemporaneous construction.'" DiProspero v. Penn, 183 N.J. 477, 492-93 (2005) (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)).

We begin our analysis by reference to the plain text of N.J.S.A. 39:6A-2(h), which defines "pedestrian" as "any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks." (emphasis added). Here, it is clear that an LSES is a vehicle propelled by other than muscular power. Our determination is grounded in the text of N.J.S.A. 39:1-1, which defines an LSES—in part—as having "an electric motor that is capable of propelling the device with or without human propulsion." (emphasis added).

Even if we were to find that N.J.S.A. 39:4-14.16(g) permits this court to equate an LSES operator to a bicyclist, the statute's exception defeats plaintiff's argument:

> [A]ll statutes . . . rules and regulations applicable to bicycles. . . shall apply to [an LSES] except those provisions which by their very nature may have no application to . . . [an LSES].
>
> [N.J.S.A. 39:4-14.16(g) (emphasis added).]

As Judge Hudak found, the definition of pedestrian under N.J.S.A. 30A:6-4 is incompatible with the definition of an LSES and, therefore, N.J.S.A. 39:4-14.16(g), by its terms, has no application here.

To the extent we have not discussed any of plaintiff's remaining arguments, we deem them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION