



## Legal Spotlight

A column by Sue Jeffers

# The Impact of a City Snowmobile Ordinance on Snowmobiler's Claim for No-Fault Benefits

### Facts:

The city of Negaunee had adopted an ordinance prohibiting snowmobiles on any roadway within the corporate limits of the city. The ordinance provided, however, that a snowmobile could be operated at speeds not to exceed 10 miles per hour between the hours of 8:00 am and 11:59 pm on the extreme right-hand shoulder of the road if available or upon the extreme right-hand edge of the road if no shoulder is available . . .

Between 1:00 am and 2:00 am on January 17, 2001, John Allan Kennedy left Ed's Iron Inn on his snowmobile. While riding his snowmobile in Negaunee, Kennedy collided with the rear of an automobile that had been parked near a snow bank by Jeri Barabe. Kennedy was injured and sued Barabe seeking to recover first-party no-fault benefits (personal protection insurance benefits (PIP)) from Barabe based upon the unreasonably parked vehicle exception of the no-fault statute (MCL 500.3106(1)(a).

A snowmobile is not a vehicle for purposes of the Michigan no-fault statute precluding Kennedy from recovery on that basis. Nor, as a general rule, are injuries compensable under the no-fault act if they arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle. An exception exists, however, if the injuries arise if the vehicle "was parked in such a way as to cause unreasonable risk of the bodily injury which occurred." As a result, Kennedy claimed he was entitled to compensation on the basis that his injuries arose from Barabe's "unreasonably parked vehicle."

Barabe argued, however, that since Kennedy was prohibited from driving on the road in the first place, Kennedy was not within the class of persons to be protected by the city's parking ordinance. Kennedy argued that he was not excluded from coverage for first-party benefits merely because he was operating his snowmobile unlawfully, i.e. operating his snowmobile in violation of the city ordinance. Kennedy claimed that a jury should decide whether the Barabe vehicle was parked in such a way as to cause unreasonable risk of bodily injury.

### Question:

Was Kennedy within the class of persons to be protected by the city's parking ordinance if he was not legally on the road by virtue of the no snowmobile ordinance?

#### Answer, according to the trial court:

No. Since Kennedy was not legally on the road at the time of the accident, Barabe owed him no duty with regard to the parking of her vehicle. The trial court had also found, however, that Kennedy was speeding and driving his snowmobile while impaired and that because of all three reasons, Kennedy was operating his snowmobile illegally and was precluded from recovery of no-fault first-party benefits.

#### Answer, according the Michigan Court of Appeals:

No. Barabe owed no duty with respect to her parked vehicle to Kennedy since he was prohibited from the road and,



Photo by the International Snowmobile Manufacturer's Association, courtesy of Travel Michigan.

as a result, was not within the class of persons to be protected by the parking ordinance and therefore was not within the class of persons to which Barabe owed a duty. The court noted that Kennedy's actions of speeding and impaired snowmobile driving, although evidence of negligence, would not have precluded a claim for first-party no-fault benefits since benefits are normally paid regardless of fault. The court further noted that it was not necessary to determine whether the vehicle was reasonably parked or not, since Kennedy was not within the class of persons protected by the unreasonably parked vehicle exception.

*Kennedy v State Farm Mutual Auto Insurance Company*, No. 251004, May 27, 2004. The case is an unpublished decision of the Michigan Court of Appeals with limited precedential value. 