

STATE OF MICHIGAN
COURT OF APPEALS

CLARICE CRUTCHER,

Plaintiff-Appellant,

v

MAKHI CHAPMAN, RENITA CHAPMAN,
MEMBERSELECT INSURANCE COMPANY, and
PROPERTY AND CASUALTY INSURANCE
COMPANY OF HARTFORD,

Defendants-Appellees.

UNPUBLISHED

April 16, 2020

No. 348646

Wayne Circuit Court

LC No. 18-004220-NI

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

Plaintiff, Clarice Crutcher, appeals as of right the circuit court's order granting summary disposition in favor of defendants under MCR 2.116(C)(10) (no genuine issue of material fact) on the question of whether she suffered a serious impairment of body function. We affirm.

I. BACKGROUND

On July 9, 2016, Makhi Chapman, while operating his mother Renita Chapman's vehicle, struck the motor vehicle in which plaintiff was an unrestrained rear-seat passenger. Thereafter, plaintiff received a series of medical treatments and tests regarding multiple ailments. Relevantly, these ailments included: degenerative issues with her cervical spine, a disc protrusion in her cervical spine, neck pain, a concussion, post-concussion syndrome, headaches, and bruising to her knee, forehead, and buttocks as well as facial numbness, pain, and paresthesia. Before the accident, plaintiff had also received tests and treatments related to her facial numbness, neck arthritis, and degenerative conditions in her cervical spine.

In April 2018, plaintiff filed a complaint in the circuit court alleging multiple counts, including one for negligence, related to the car accident. Defendant Renita Chapman moved for summary disposition under MCR 2.116(C)(10) on the ground that plaintiff could not demonstrate a serious impairment, which the remaining defendants joined. The circuit court granted the motion and dismissed plaintiff's claims as to all defendants. This appeal follows.

II. DISCUSSION

On appeal, plaintiff argues that the circuit court erred when it dismissed her claims. Plaintiff contends that there was a factual dispute as to the nature and extent of her injuries and that she demonstrated a prima facie case of a serious impairment. We disagree.

“A trial court’s decision regarding a motion for summary disposition is reviewed de novo.” *Sullivan v Michigan*, 328 Mich App 74, 80; 935 NW2d 413 (2019). “Under MCR 2.116(C)(10), summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Piccione v Gillette*, 327 Mich App 16, 19; 932 NW2d 197 (2019) (quotation marks omitted). We “must review the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Id.* (quotation marks omitted). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Id.* (quotation marks omitted). A court may not “make findings of fact; if the evidence before it is conflicting, summary disposition is improper.” *Id.* (quotation marks and emphasis omitted).

Under Michigan’s No-Fault Act, MCL 500.3101, *et seq.*, “[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). The statute further provides:

(a) The issues of whether the injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person’s injuries.

(ii) There is a factual dispute concerning the nature and extent of the person’s injuries, but the dispute is not material to the determination whether the person has suffered a serious impairment of body function or permanent serious disfigurement. [MCL 500.3135(2).]

Our Supreme Court adopted a three-prong test to determine whether an individual has demonstrated “a serious impairment of a body function.” *McCormick v Carrier*, 487 Mich 180, 215; 795 NW2d 517 (2010) (quotation marks omitted). First, the plaintiff must demonstrate “an objectively manifested impairment” that is “observable or perceivable from actual symptoms or conditions.” *Id.* Second, the plaintiff must demonstrate that the impairment is “of an important body function (a body function of value, significance, or consequence to the injured person).” *Id.* Third, this impairment must affect “the person’s general ability to lead his or her normal life (influences some of the plaintiff’s capacity to live in his or her normal manner of living).” *Id.* “In making th[is] determination, there is no bright-line rule or checklist to follow.” *Gillette*, 327 Mich App at 20 (alterations and quotation marks omitted). “Instead, whether someone has suffered a serious impairment is inherently fact- and circumstance-specific and the analysis must be conducted on a case-by-case basis.” *Id.* (alterations and quotation marks omitted).

First, the focus for an objectively manifested impairment concerns how the injuries affected the functioning of the plaintiff's body, and not on the injuries themselves. *McCormick*, 487 Mich at 197. In short, in order to be "objectively manifested" the injuries must affect the functioning of the plaintiff's body. *Id.* at 197-198. "[T]he objectively manifested requirement signifies that plaintiffs must introduce evidence establishing that there is a physical basis for their subjective complaints of pain and suffering and that showing an impairment generally requires medical testimony." *Id.* at 198 (quotation marks omitted).

Here, plaintiff cannot demonstrate that this car accident caused any objectively manifested impairment in order to establish tort liability. "In a negligence action, a plaintiff must establish both factual causation, i.e., 'the defendant's conduct in fact caused harm to the plaintiff,' and legal causation, i.e., the harm caused to the plaintiff 'was the general kind of harm the defendant negligently risked.'" *Ray v Swager*, 501 Mich 52, 64; 903 NW2d 366 (2017). A causation theory based on only slight evidence is inadequate. *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). "Nor is it sufficient to submit a causation theory that, while factually supported, is, at best, just as possible as another theory." *Id.* "Rather, [there] must [be] substantial evidence from which a jury may conclude that more likely than not, but for [the challenged] conduct, [the claimed] injuries would not have occurred." *Id.* at 164-165.

Many of plaintiff's cited objective impairments, particularly issues with her cervical spine, were preexisting and degenerative. Before the accident, plaintiff had degenerative changes in her spine, arthritis in her neck, and unexplained facial numbness and tingling on her left side. On the day of the accident, plaintiff reported to the hospital with bruising, no tenderness, and no indications of trauma in her cervical or lumbar spines or in her brain after objective testing. She also reported no neck pain. Plaintiff's disc protrusion on the MRI from August 5, 2016, her diagnosis of cervical radiculopathy, and her neck pain appear more likely than not to be related to her degenerative conditions as no physician has ever connected her complaints of pain in her cervical spine and neck to this accident or suggested that it aggravated those preexisting conditions. *Wilkinson v Lee*, 463 Mich 388, 394-395; 617 NW2d 305 (2000) ("Regardless of the preexisting condition, recovery is allowed if the trauma caused by the accident triggered symptoms from that condition."). Likewise, many of plaintiff's other conditions, such as her wrist issues and insomnia, have no demonstrated causal connection to this accident on the voluminous record below.

When plaintiff presented to physicians after the accident, she reported facial numbness, similar to what she had reported in April 2013, prior to the accident. And no physician has ever connected plaintiff's facial numbness, or its increasing severity, to the accident. Although one emergency room physician later suggested that it was possible that plaintiff had a musculoskeletal issue from the accident causing this problem, there was no objective testing that confirmed this. Indeed, even though one physician first expressed that this issue seemed connected to the motor vehicle accident, after additional consultations with plaintiff, he later assessed that there was no explanation for her condition. Another hospital physician indicated that plaintiff's facial condition was subjective without any physical basis. Moreover, a physician's diagnosis of trigeminal neuritis was over two years after the car accident and that physician did not clearly assess that that condition was related to the accident. Thus, plaintiff failed to present any evidence that any of the diagnosed injuries were more likely than not related to, or aggravated by, the subject accident.

Additionally, many of plaintiff's subjective complaints of pain, such as headaches, tenderness, knee pain, and facial numbness, lacked any objective medical diagnosis explaining how they physically manifested or originated. Indeed, the only medical diagnoses that appear causally related to the subject accident, other than the bruising, were plaintiff's diagnosis of concussion and post-concussion syndrome. However, those injuries never objectively manifested themselves as plaintiff's MRIs, MRAs, CTs, and EEGs revealed no signs of brain or skull injury. Lastly, as to plaintiff's bruising, which was undoubtedly caused by the accident, there was no indication that it impacted her functioning. Instead, plaintiff testified that those issues had generally resolved, aside from the occasional pain in her knee that lacked any objective medical diagnosis connecting it to this accident. Accordingly, the trial court correctly determined that there was no genuine issue of material fact regarding plaintiff's ability to demonstrate that she suffered an objectively manifested impairment arising from this car accident.¹

Affirmed.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford

¹ In light of this, we need not address the remaining *McCormick* prongs. But, for the sake of completeness, our review of the record also clearly demonstrates that plaintiff's alleged impairments did not affect her important body functions or impact her ability to live her normal, pre-accident life. Therefore, the trial court also appropriately granted summary disposition on those prongs as well.