

STATE OF MICHIGAN
COURT OF APPEALS

KISSIA ALEXANDER,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

November 19, 2020

No. 349320

Wayne Circuit Court

LC No. 17-015641-NI

Before: GLEICHER, P.J., and K. F. KELLY and SHAPIRO, JJ.

PER CURIAM.

Plaintiff Kissia Alexander sustained injuries requiring medical treatment when the bus she was riding came to a sudden, unexpected stop. She brought a tort action against the city of Detroit, which operated the bus, combined with a claim for personal protection insurance (PIP) benefits. The circuit court granted summary disposition of both causes of action under MCR 2.116(C)(10), ruling that “a sudden stop is not negligence” and that the “facts” did not establish an accident giving rise to a first-party claim. We affirm in part, vacate in part, and remand for further proceedings.

I

Alexander boarded a Detroit Department of Transportation (DDOT) bus between 9 and 10 p.m. on a Saturday evening. Only four or five other people were on the bus at the time. Alexander recounted at her deposition that as the bus approached the depot, the driver first “tapped” the brake and then “slammed” it. She flew forward, striking a plexiglass panel. Alexander did not explain why the driver had suddenly hit the brake so hard, except that she had noticed an approaching traffic light and police cars with lights flashing “three, four blocks away.”

Alexander's description of the accident is the only evidence of record regarding the event, as the bus driver was never deposed.¹ Here is her testimony:

A. . . . And we got near the depot and it seemed like there was something going on in the area, a bunch of police cars, like three, four blocks away from where we was at. And I was looking out the window and wondering what was going on. And I notice we was coming up to a traffic light, the bus driver was. And it looked like it was (inaudible). So I was on my cell phone. Texting someone at the time and I was looking down. And the bus driver tapped the break [sic]. I put my right foot forward to stop the forward motion. And a few seconds later he slammed the brake. I flew forward, hitting the Plexiglass right behind the driver and I rolled over into the aisle-way and my back was up against the lower black part of the stairway. And I just rolled over flat on my stomach and tried to lift myself up, and I couldn't lift myself up. So I just laid back down. There was another passenger that got thrown out the seat but he was sitting side ways. And he got up and when he got up, he picked me up off the floor and grabbed me at my hip and lift me up. And I couldn't straighten my body up, so he had to literally, take his hand and grab me at the shoulder and straighten me up so I'm in a standing position. And then dragged me over to the seat I was sitting in and seated me back in the seat.

Q. Did the bus come to a complete stop?

A. Yes, it did.

Q. Did it collide with anything?

A. Not that I could tell.

Q. And then after the bus came to a complete stop, what did the bus do after that?

A. He went to the bus depot.

Q. What did you do at the bus depot?

A. I got up to catch my next bus.

¹ Alexander's brief on appeal asserts that "Defendant has refused to produce the driver of the DDOT bus or the video of the accident." We note that Alexander never filed a motion to compel discovery in the trial court, and the record contains no evidence that plaintiff sought this information through either interrogatories or requests for production. Under the circuit court's scheduling order, discovery was permitted "through the date of case evaluation," which occurred on November 13, 2018. Defendant's motion for summary disposition was not filed until April 26, 2019.

Q. So you were transferring busses at the bus depot?

A. Yes.

Alexander's complaint named only the city of Detroit as a defendant. Count I set forth a claim for PIP benefits, and in Count II, Alexander alleged that the bus driver's negligence had caused her injuries, entitling her to noneconomic damages under MCL 500.3135. The city sought summary disposition of both claims, asserting that governmental immunity barred recovery under a negligence theory and that Alexander had not established either a serious impairment of an important body function or the reasonable necessity of the medical treatment she received. Alexander replied that genuine issues of material fact precluded summary disposition of either claim. The circuit court sided with the city and dismissed the case in its entirety, reasoning:

Well the pain alone isn't enough for a serious impairment. Here we don't have any surgery, we don't have any broken bones.

The actual, the [*Seldon v Suburban Mobility Auth for Regional Transp*, 297 Mich App 427; 824 NW2d 318 (2012),] case says that a sudden stop is not negligence, that's to be expected on a bus.

If she had a broke [sic] leg or something like that, but here there's really no proof of exact accident date, there's no report, et cetera.

It's not enough factual [sic] here to prove that there is actually an accident.

And secondly, there's just no serious impairment of a body function.

So the Court will grant Defendant's motion, the case [is] dismissed.

Alexander now appeals.

II

We review de novo a circuit court's grant of summary disposition. *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013).

A motion under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App at 621. "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.” *West*, 469 Mich at 183. [*Zaher*, 300 Mich App at 139-140.]

When entertaining a summary disposition motion under subrule (C)(10), the court must refrain from making credibility determinations or weighing the evidence. *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013).

A

The circuit court correctly determined that Alexander’s testimony failed to create a genuine issue of material fact regarding the bus driver’s negligence. Alexander was entitled to demonstrate a triable question based on reasonable inferences flowing from her testimony. But a reasonable inference must be grounded in some provable fact. *Daigneau v Young*, 349 Mich 632, 635-636; 85 NW2d 88 (1957). Alexander focuses on the driver’s sudden and violent application of the brakes, contending that “given the approaching traffic signal as well as a flurry of polic[e] lights and activity, the bus driver did not make reasonable allowances for the road conditions that were present and did not proceed with the caution and care necessary for the surrounding conditions.” Absent from Alexander’s argument, however, is any actual evidence that either the approaching traffic light or the more distant police activity had anything to do with the stop of the bus. Alexander conjectures that both did, but has no evidence that either played a role. She presented no evidence that the stop light was changing or had changed when the driver applied the brake, or that the bus was speeding, or that the driver failed to stop within a reasonable distance of the traffic or the light in front of him, or that the driver acted unreasonably by sharply applying the brakes. Accordingly, Alexander’s third-party case must fail. See also *Seldon*, 297 Mich App at 437 (“[A]bsent evidence of other negligence pertaining to the operation of a bus, a plaintiff bus passenger may not recover for injuries sustained when the bus suddenly stopped because such stops are normal incidents of travel.”).

B

The circuit court did err, however, in dismissing Alexander’s claim for no-fault PIP benefits. In granting summary disposition in favor of the city, the circuit court determined that there was insufficient evidence that an accident had occurred. As we stated above, when deciding a motion for summary disposition a court must view the evidence in the light most favorable to the nonmoving party. *Walsh*, 263 Mich App at 621. Assessing the evidence through that lens means that a court may not make findings of fact or assess the credibility of witnesses. *White v Taylor Distrib Co, Inc*, 482 Mich 136, 142-143; 753 NW2d 591 (2008).

It is a basic proposition of law that determination of disputed issues of fact is peculiarly the jury’s province. Even where the evidentiary facts are undisputed, it is improper to decide the matter as one of law if a jury could draw conflicting inferences from the evidentiary facts and thereby reach differing conclusions as to ultimate facts. [*Nichol v Billot*, 406 Mich 284, 301-302; 279 NW2d 761 (1979) (citations omitted).]

Alexander testified without equivocation that the bus made a sudden stop; that she flew forward and struck the plexiglass barrier behind the bus driver; fell into the bus’s aisle; was unable

to stand without assistance; injured her back, neck, and hip as a result; and subsequently sought medical care. Her medical records confirm that she related to her providers that her symptoms were triggered by what happened on the bus. When viewed in the light most favorable to Alexander, the record establishes a genuine issue of material fact regarding whether an accident occurred. Summary disposition of Alexander's PIP claim was therefore inappropriate.

III

We affirm summary disposition of Alexander's third-party negligence claim. We vacate the grant of summary disposition concerning Alexander's first-party claim for PIP benefits and remand to the circuit court for further proceedings. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro