STATE OF MICHIGAN

COURT OF APPEALS

SHARONA WILLIAMS,

Plaintiff-Appellant,

and

MICHIGAN HEAD & SPINE INSTITUTE, PC,

Intervening-Plaintiff,

v

MARI TOURS & TRANSPORTATION, LLC, and JOHN DOE, also known as TWYMAN MCCLELLAN,

Defendants-Appellees,

and

LANCER INSURANCE COMPANY and MEEMIC INSURANCE COMPANY,

Defendants.

UNPUBLISHED
September 17, 2020

No. 348901
Wayne Circuit Court
LC No. 18-000326-NI

Before: RIORDAN, P.J., and O'BRIEN and SWARTZLE, JJ.

PER CURIAM.

Plaintiff challenges on appeal the trial court's order granting summary disposition under MCR 2.116(C)(10) to Mari Tours and Transportation, LLC and Twyman McClellan (together, defendants). We affirm.

I. BACKGROUND

On January 9, 2017, plaintiff was traveling on a bus owned and operated by Mari Tours and driven by McClellan. Plaintiff alleges that at around 4:00 a.m., while the bus was traveling

on the Pennsylvania Turnpike, McClellan lost control of the bus and struck a concrete median barrier, which resulted in plaintiff's injuries.

Immediately following the accident, plaintiff did not report any injury. But the following day—January 10, 2017—plaintiff reported to the emergency room complaining of pain in her lower back and abdomen. Plaintiff underwent a CT scan of her abdomen and pelvis, and was ultimately discharged that night with an acute muscular strain. Her discharge documents did not note any limitations.

Over the next few months, plaintiff sought treatment from various doctors. As relevant to this appeal, plaintiff underwent an MRI on April 18, 2017, that showed several bulging discs in her spine, as well as numerous instances of foraminal stenosis (the narrowing or tightening of the openings between the bones in the spine). The doctors did not document what caused these abnormalities. On May 22, 2017, plaintiff attended an independent medical examination (IME), and the doctor was "unable to establish a causal relationship between any of [plaintiff's] current complaints to the accident."

Much later, on July 18, 2018, plaintiff saw doctors at the Michigan Head and Spine Institute who diagnosed plaintiff with numerous disc herniations and a bulging disc. The doctors did not report or otherwise document what caused these abnormalities. Plaintiff went back to the Michigan Head and Spine Institute on September 18, 2018, and the doctors documented the same injuries but once again did not report the suspected cause of the injuries. On September 22, 2018, plaintiff attended a second IME, and the doctor that examined plaintiff concluded that plaintiff's "multilevel disc disease in her neck and back [was] not related to the accident," and that her "current complaints [were] more related to her obesity and chronic degenerative problems."

Plaintiff brought the instant action seeking no-fault benefits, and defendants eventually moved for summary disposition under MCR 2.116(C)(10). In their motion, defendants asserted that plaintiff could not establish the threshold requirements for recovery under the Michigan no-fault insurance act, MCL 500.3101 *et seq*., because she could not establish that her injuries were caused by the January 2017 accident. Defendants asserted that plaintiff's "injuries are not from the accident, but rather are from her prior injuries and her unhealthy lifestyle[.]" In response, plaintiff asserted that defendants "have no support" for their assertion that plaintiff's "injuries are not from the motor vehicle accident," and that any of the IME doctors' opinions that could support such an assertion created an issue for the jury to decide. Following a hearing on defendants' motion, the trial court held that "[p]laintiff cannot show she sustained a threshold injury in this matter" and granted summary disposition to defendants.

This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision to grant summary disposition. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 205-206; 920 NW2d 148 (2018). Defendants moved for summary disposition under MCR 2.116(C)(10). Under that subrule, summary disposition is appropriate if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR

2.116(C)(10). "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 v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The moving party has the initial burden of production and may satisfy that burden by either submitting "affirmative evidence that negates an essential element of the nonmoving party's claim," or by demonstrating "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

III. ANALYSIS

The Michigan no-fault insurance act limits tort liability "as it relates to automobile accidents." *McCormick v Carrier*, 487 Mich 180, 189; 795 NW2d 517 (2010). Under the act, "[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).

Plaintiff claimed that she suffered a serious impairment of a body function. The statutory language of MCL 500.3135 provides three prongs necessary to establish a "serious impairment of body function": "(1) an objectively manifested impairment (2) of an important body function that (3) affects the person's general ability to lead his or her normal life." *McCormick*, 487 Mich at 195.[1] Plaintiff focuses her appeal on addressing these three prongs, but this misses the mark. While the trial court's ruling was vague, we believe that, based on defendants' dispositive motion and plaintiff's response, the focus of the court's ruling was on whether plaintiff's injuries were "caused by" the motor-vehicle accident.[2] MCL 500.3135(1).

"Proximate causation is a required element of a negligence claim." *Patrick v Turkelson*, 322 Mich App 595, 616; 913 NW2d 369 (2018). "To establish proximate cause, the plaintiff must prove the existence of both cause in fact and legal cause." *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997). "Establishing cause in fact requires the plaintiff to present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." *Patrick*, 322 Mich App at 617 (quotation marks and citation omitted). "A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best

[1] When *McCormick* was released, the statutory requirements for "serious impairment of body function" were found in MCL 500.3135(7). See *McCormick*, 487 Mich at 194-195. That statute has since been amended, and the relevant statutory language is now in MCL 500.3135(5). See 1995 PA 222; 2019 PA 21. Though in a new section, the relevant language is unchanged.

[2] If we are mistaken in our interpretation of the trial court's ruling, we would nevertheless be required to address the causation argument because defendants raised the issue in the trial court and would "be entitled to have the trial court's ruling affirmed on alternate grounds . . . ." *Patrick v Turkelson*, 322 Mich App 595, 615-616; 913 NW2d 369 (2018).

evenly balanced, it becomes the duty of the court to direct a verdict for the defendant." *Weymers*, 454 Mich at 648 (quotation marks and citation omitted).

In their dispositive motion, defendants asserted that they were entitled to summary disposition under MCR 2.116(C)(10) because a review of plaintiff's evidence showed that it was insufficient to establish that plaintiff's injuries were caused by the January 9, 2017 motor-vehicle accident. See *Quinto*, 451 Mich at 362 (explaining that a moving party can carry its burden under MCR 2.116(C)(10) by showing "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim"). Defendants further asserted that they were entitled to summary disposition because the results of plaintiff's IMEs showed that her complained-of injuries were in fact *not* caused by the January 2017 accident. See *id*. (explaining that a moving party can carry its burden under MCR 2.116(C)(10) by submitting "affirmative evidence that negates an essential element of the nonmoving party's claim").

In response, plaintiff did not point to any evidence tending to establish that her injuries were caused by the January 2017 motor-vehicle accident. Instead, she asserted that defendants "have no support that [plaintiff's] injuries are not from the motor vehicle accident of Jan. 7 [sic], 2019." This is factually incorrect, however, because defendants submitted statements from the two doctors who conducted plaintiff's IMEs; one doctor stated that he was "unable to establish a causal relationship between any of [plaintiff's] current complaints to the accident," and the other stated that plaintiff's "multilevel disc disease in her neck and back [was] not related to the accident," and that her "current complaints [were] more related to her obesity and chronic degenerative problems."[3] Moreover, to show that her injuries were caused by the motor-vehicle accident, plaintiff needed "to present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." *Patrick*, 322 Mich App at 617 (quotation marks and citation omitted). Plaintiff simply failed to do this.[4] Without any evidence showing that plaintiff's injuries were caused by the January 2017 motor-vehicle accident, such a conclusion was "pure speculation," and so it became "the duty of the court to direct a verdict for the defendant." *Weymers*, 454 Mich at 648 (quotation marks and citation omitted). That is, plaintiff's evidence was insufficient to establish an essential

[3] In response to defendants' dispositive motion, plaintiff asserted that the IME doctors' opinions created a question of fact for the jury because the doctors did not compare plaintiff's MRIs taken after the accident with MRIs taken before the accident before forming their opinions. While this is true, plaintiff failed to explain why this created a question of fact for the jury—that is, both doctors still opined that plaintiff's injuries were not caused by the January 2017 accident. We also note that the IME doctors could only have accessed plaintiff's MRIs from before the accident if plaintiff provided those MRIs to the doctors, and plaintiff apparently chose not to do that.

[4] In her response to defendants' dispositive motion, plaintiff stated that her doctors "compared MRI[s] taken after the motor vehicle accident and opined that [plaintiff's] injuries in her neck and back [had] only gotten progressively worse since the motor vehicle accident and recommended a surgical consult as a result." It is true that plaintiff's doctors compared an MRI taken on July 7, 2018, with an MRI taken on September 19, 2018, and noted that plaintiff's "degenerative disc changes" were "persistent," but this simply does not support that plaintiff's injuries were caused by the January 2017 accident.

element of her claim, and summary disposition for defendants was proper. Additionally, in light of defendants' evidence showing that plaintiff's injuries were not caused by the 2017 motor-vehicle accident and the lack of any evidence showing that they were, reasonable minds could only conclude that plaintiff's injuries were not caused by the 2017 motor-vehicle accident, and defendants were entitled to summary disposition for this reason as well.

Affirmed.

/s/ Michael J. Riordan
/s/ Colleen A. O'Brien
/s/ Brock A. Swartzle