STATE OF MICHIGAN

COURT OF APPEALS

VIVIAN BUFORD,

Plaintiff-Appellant,

v

ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 24, 2021

No. 354066
Wayne Circuit Court
LC No. 19-003299-NF

Before: STEPHENS, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

Plaintiff Vivian Buford appeals as of right the trial court's order granting defendant Esurance Property & Casualty Insurance Company's motion for summary disposition. We affirm.

I. FACTS & PROCEDURAL HISTORY

This case arises from a motor vehicle accident. Plaintiff was the driver of a vehicle insured by defendant for no-fault benefits, including personal injury protection (PIP) benefits. Plaintiff did not immediately seek medical assistance, but about one month later sought medical treatment for pain in her neck, hips, knees, and lower back. On the advice of her doctor, plaintiff then received chiropractic care, steroid injections, neuroablation treatments, and physical therapy. She also received replacement services and attendant care provided by a neighbor. Plaintiff sought PIP benefits from defendant, which denied the claim. The present litigation ensued.

During discovery, defendant served plaintiff with a request for admissions and interrogatories. The request for admissions and interrogatories inquired, in part, whether plaintiff had any preexisting medical conditions relating to pain in her back, neck, and knees. In her answers, plaintiff stated she was "not certain" that she had any conditions related to these body parts. Defendant also conducted a deposition of plaintiff in which she denied that she suffered from any conditions before the accident or had received any significant treatments related to her shoulders, hips, or neck.

As part of the discovery process, defendant acquired a number of plaintiff's medical records from before the automobile accident. These records revealed an extensive history of knee, back, and neck pain, along with headaches. As a result of these conditions, plaintiff's doctors had previously prescribed a cane and walker along with numerous pain medications.

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff was not entitled to PIP benefits because (1) her claimed injuries did not arise out of the automobile accident; (2) she committed fraud in her claim for PIP benefits; and (3) she failed to show that she incurred costs for replacement services and attendant care. Plaintiff's response to the motion contained a singular argument—that she had not committed fraud in her claim for PIP benefits against defendant. Plaintiff did not make any argument against defendant's contention that her injuries did not arise out of the automobile accident. The trial court ruled in defendant's favor, stating as follows:

> [p]laintiff's objections to [d]efendant's fraud arguments have some merit, particularly since the motion does not identify the specific fraudulent statements on which it is based. Plaintiff's response does not, however, dispute in any meaningful way [d]efendant's argument that her current injuries predated the March 2018 accident, much less cite any evidence to refute [d]efendant's contention. In fact, [p]laintiff's response to this motion includes no exhibits of any kind.
>
> In this context, the Court can only conclude that it is beyond factual dispute that [p]laintiff's injuries are not attributable to the March 2018 accident, and that [d]efendant is entitled to summary disposition on this basis. Thus, [d]efendant's motion is granted, and [p]laintiff's claim is dismissed.

This appeal followed.

II. DISCUSSION

Plaintiff argues that the trial court erred when it granted defendant's motion for summary disposition because, according to plaintiff, her injuries arose out of the automobile accident. We disagree.

A. STANDARD OF REVIEW

"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). And, "[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*. However, a party's mere conjecture does not amount to a question of fact. See *Skinner v Square D Co*, 445 Mich 153, 174; 516 NW2d 475 (1994) ("We recognize that motions for summary judgment implicate considerations of the jury's role to decide questions of material fact. At the same time, however, litigants do not have any right to submit an evidentiary record to the jury that would allow the jury to do nothing more than guess.").

To the extent that we must consider provisions of the no-fault act, MCL 500.3101 *et seq*., "this Court reviews de novo issues of statutory construction." *Nason v State Employees' Retirement Sys*, 290 Mich App 416, 424; 801 NW2d 889 (2010). "The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature . . . ." *Tevis v Amex Assurance Co*, 283 Mich App 76, 81; 770 NW2d 16 (2009). "If the language is clear and unambiguous, this Court must enforce the statute as written. . . . Unless defined by statute, words and phrases are to be given their plain and ordinary meaning, and this Court may consult a dictionary to determine that meaning." *Tree City Props LLC v Perkey*, 327 Mich App 244, 247; 933 NW2d 704 (2019).

B. ANALYSIS

Initially, we note that defendant made other arguments in its motion for summary disposition, but the disagreement on appeal concerns only its first argument that plaintiff's injuries did not arise out of the subject automobile accident. Indeed, the trial court granted summary disposition on this basis, stating, "the Court can only conclude that it is beyond factual dispute that [p]laintiff's injuries are not attributable to the March 2018 accident." The trial court reached this conclusion on the basis of its belief that, in response to defendant's motion for summary disposition, plaintiff did not "dispute in any meaningful way [d]efendant's argument that her current injuries predated the March 2018 accident, much less cite any evidence to refute [d]efendant's contention."

MCL 500.3105(1) states that "an insurer is liable to pay benefits for accidental injury arising out of the ownership, operation, maintenance or use of a motor vehicle . . . ." Under MCL 500.3105(1), "a no-fault insurer is liable to pay benefits only to the extent that the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident." *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 531; 697 NW2d 895 (2005).

In presenting a motion for summary disposition, "[t]he moving party must specifically identify the matters that have no disputed factual issues, and it has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence." *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 440; 814 NW2d 670 (2012). Once the moving party does so,

> [t]he burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996) (citations omitted).]

Here, defendant argues that the trial court properly granted summary disposition on the basis of MCL 500.3105(1) because of "[p]laintiff's failure to ***timely*** submit any argument or materials that addressed the issue of causation." Thus, we must address two questions. The first question is whether defendant identified evidence indicating that there was no genuine issue of

material fact that plaintiff's alleged injuries did not arise out of the automobile accident. *Bronson Methodist Hosp*, 295 Mich App at 440. If so, then the second question is whether plaintiff identified contrary evidence establishing a genuine issue of material fact. *Quinto*, 451 Mich at 362-363.

With respect to the first question, we conclude that defendant properly identified evidence indicating that plaintiff's injuries did not arise out of the automobile accident. Defendant's brief in support of its motion for summary disposition states that "[p]laintiff's multitude of pre-accident medical records and allegations of injury mirror her pre-accident complaints." Specifically, defendant pointed out that "[p]laintiff was suffering from severe head, neck, back, and knee injuries and pain for at least 20 years before the accident." Yet, after the accident, defendant notes that plaintiff complained of the same or similar conditions, which she stated arose from the accident. Defendant supported this position with a number of exhibits showing that plaintiff's preexisting injuries were similar to her postaccident complaints. Given the extensive nature of the medical documentation showing plaintiff's preexisting medical conditions, defendant met its initial burden as the moving party under MCR 2.116(C)(10).

With respect to the second question, because we conclude that defendant met its initial burden for summary disposition, the burden then shifted to plaintiff to establish a genuine question of material fact with respect to whether her injuries arose out of the automobile accident. *Quinto*, 451 Mich at 362-363. In this case, plaintiff's response to defendant's motion for summary disposition solely argued that she had not committed fraud when she submitted the claim to defendant for PIP benefits. Nowhere in her brief did she respond to or argue against defendant's assertion that her injuries did not arise out of the automobile accident.[1] Nor did plaintiff provide any supporting documentation to the brief showing that her injuries arose out of the accident. In short, there is nothing in the lower court record to indicate that plaintiff even attempted to establish a factual dispute in response to defendant's motion for summary disposition, let alone present "documentary evidence establishing the existence of a material factual dispute." *Id*. Accordingly, the trial court did not err by granting defendant's motion for summary disposition on the basis that "it is beyond factual dispute that [p]laintiff's injuries are not attributable to the March 2018 accident."

As a final matter, in her brief on appeal, plaintiff makes several arguments contending that the trial court wrongly decided the motion for summary disposition. We point out that plaintiff failed to make any of these arguments to the trial court. In fact, the lower court record is completely devoid of any argument by plaintiff as to the issue pertinent to this appeal. Accordingly, we decline to address any of the arguments plaintiff now brings on appeal. See *Southfield Ed Ass'n v Bd of Ed of Southfield Pub Sch*, 320 Mich App 353, 377-378; 909 NW2d 1 (2017) ("In the absence of a ruling by the trial court, this Court has nothing to review.").

III. CONCLUSION

[1] The motion was decided without oral argument.

The trial court properly granted summary disposition in favor of defendant. Accordingly, we affirm.

/s/ Cynthia Diane Stephens
/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan