STATE OF MICHIGAN

COURT OF APPEALS

SPECTRUM HEALTH HOSPITALS and SPECTRUM HEALTH CONTINUING CARE CENTER, INC., doing business as SPECTRUM HEALTH REHAB AND NURSING CENTER-KALAMAZOO AVENUE,

Plaintiffs-Appellees,

v

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
November 23, 2021

No. 352488
Ingham Circuit Court
LC No. 17-000785-NF

CHELSEA LOUGHIN, as Personal Representative of the ESTATE OF KEVIN SHEA LINDSEY and Next Friend of CONSTANCE LINDSEY, SHEALYN LINDSEY, and KEVIN E. LINDSEY,

Plaintiff-Appellee,

v

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant-Appellant.

No. 352944
Ingham Circuit Court
LC No. 17-000376-NF

Before: RICK, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

In these consolidated appeals involving claims for no-fault personal protection insurance (PIP) benefits, defendant Esurance Property and Casualty Insurance Company appeals the trial

court's January 8, 2020 judgment in favor of plaintiffs Spectrum Health Hospitals and Spectrum Health Continuing Care Center, Inc., doing business as Spectrum Health Rehab and Nursing Center-Kalamazoo Avenue, and Chelsea Loughin, as personal representative of the Estate of Kevin Shea Lindsey and as next friend of Constance Lindsey, Shealyn Lindsey, and Kevin E. Lindsey. Defendant also challenges the trial court's decisions to grant summary disposition in favor of plaintiffs and to deny defendant's motion for summary disposition. We reverse in part, affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

On November 26, 2016, the decedent and Loughin, who were in a relationship at the time, were arguing in a motor vehicle that was being driven by Loughin. The decedent either fell or jumped out of the vehicle. The decedent suffered head injuries and died in September 2017. Defendant denied claims for PIP benefits on the ground that the decedent's injuries did not qualify as an "accidental bodily injury" under MCL 500.3105(1) because the decedent had intentionally caused his injuries.

Plaintiffs filed suits seeking PIP benefits under Michigan's No-Fault Automobile Insurance Act, MCL 500.3101, *et seq*. Defendant and Loughin filed cross-motions for summary disposition, and Spectrum Health Hospitals and Spectrum Health Continuing Care Center moved for summary disposition in their favor under MCR 2.116(I)(2). The trial court denied defendant's motion and granted plaintiffs' motions. The trial court concluded that the undisputed evidence established that the decedent's injuries were accidental and that defendant was liable for PIP benefits under MCL 500.3105(1). Thereafter, on January 8, 2020, the trial court entered a final judgment in favor of plaintiffs, which included interest and attorney fees. These appeals followed.

II. SUMMARY DISPOSITION IN FAVOR OF PLAINTIFFS

Defendant argues that the trial court erred by granting summary disposition in favor of plaintiffs on their claims for no-fault benefits. We agree.

A. STANDARDS OF REVIEW

"We review de novo issues of statutory . . . interpretation." *Vanalstine v Land O'Lakes Purina Feeds, LLC*, 326 Mich App 641, 648; 929 NW2d 789 (2018). Generally, this Court "review[s] de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019).

> A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. [*Id*. at 160 (quotation marks, citations, and emphasis omitted).]

"Courts are liberal in finding a factual dispute sufficient to withstand summary disposition." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009). Courts may not resolve factual disputes or determine matters of credibility when deciding

a motion for summary disposition. *White v Taylor Distrib Co, Inc*, 275 Mich App 615, 625; 739 NW2d 132 (2007). "Because questions of credibility and intent are properly resolved by the trier of fact," *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 174; 530 NW2d 772 (1995), "[s]ummary disposition is suspect where motive and intent are at issue or where the credibility of a witness is crucial," *Foreman v Foreman*, 266 Mich App 132, 135; 701 NW2d 167 (2005). Ultimately, "[a] genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds might differ." *Myers v City of Portage*, 304 Mich App 637, 641; 848 NW2d 200 (2014) (quotation marks and citation omitted).

Summary disposition under MCR 2.116(I)(2) is proper "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment" as a matter of law.

B. ANALYSIS

"[A]n insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle[.]" MCL 500.3105(1). "Bodily injury is accidental as to a person claiming [PIP] benefits unless suffered intentionally by the injured person or caused intentionally by the claimant." MCL 500.3105(4). Thus, recovery of PIP benefits is barred "by people who intended to injure themselves or commit suicide."[1] *Frechen v Detroit Auto Inter-Ins Exch*, 119 Mich App 578, 580; 326 NW2d 566 (1982). The insurer bears the burden to establish an exclusion from coverage. *Hunt v Drielick*, 496 Mich 366, 373; 852 NW2d 562 (2014).

"One acts intentionally if he [or she] intended both the act *and* the injury." *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 226; 553 NW2d 371 (1996). "The subjective intent of an actor is the focus of determining whether the actor acted intentionally." *Id*. Intent may be inferred from the facts, *Schultz v Auto-Owners Ins Co*, 212 Mich App 199, 202; 536 NW2d 784 (1995), and "need not be proven by direct evidence," *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 12; 596 NW2d 620 (1999) (quotation marks and citation omitted). In other words, "questions concerning the state of one's mind, including intent, motivation, or knowledge can be proven by circumstantial evidence." *Bergen v Baker*, 264 Mich App 376, 387; 691 NW2d 770 (2004). Circumstantial evidence is evidence that would "facilitate reasonable inferences of causation, not mere speculation." *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). To be circumstantial evidence of causation, the facts or conditions require "a reasonable likelihood of probability rather than a possibility," and "such evidence must exclude other reasonable hypotheses with a fair amount of certainty." *Id*. at 166 (quotation marks omitted). "[W]hen the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to" grant judgment as matter of law. *Id*. at 165 (quotation marks and citation omitted).

[1] Although the trial court focused on whether the evidence supported that the decedent intended to commit suicide, MCL 500.3105(4) precludes liability not only in cases of suicide, but also where an individual intended to cause himself injury.

"Frequently, the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor." *Cipri*, 235 Mich App at 12 (quotation marks and citations omitted). While an actor's intent to injure himself cannot be judged merely by what is a foreseeable result of his conduct, *Frechen*, 119 Mich App at 581-582, it is nonetheless true that an actor's intent may be reflected in "the natural consequences of his deeds," *Cipri*, 235 Mich App at 12 (quotation marks and citations omitted). See also *Foreman*, 266 Mich App at 143 ("Intent is a mental condition and is determined not so much by what one says as it is by what one does.") (Quotation marks and citation omitted.) Stated differently, "where the injury or resulting death is the natural, anticipated and expected result of an intentional act, courts may presume that both act and result are intended." *Mattson v Farmers Ins Exch*, 181 Mich App 419, 424; 450 NW2d 54 (1989) (alteration, quotation marks, and citation omitted).

When evaluating whether an individual intended to cause injury to himself or herself, numerous facts and circumstances can be considered, including events leading up to the injuries, *Schultz*, 212 Mich App at 201-202, overt expressions of suicidal intent, *Miller*, 218 Mich App at 223-224, 234, the actor's level of intoxication, *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 19; 684 NW2d 391 (2004), and details surrounding the incident such as whether the actor tried to prevent the injury, *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 630; 499 NW2d 423 (1993), overruled on other grounds *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503; 821 NW2d 117 (2012).

In this case, viewing the evidence in a light most favorable to defendant, we conclude that reasonable minds could differ as to whether the decedent jumped out of a moving vehicle and, if so, whether he intended to injure himself. In the minutes leading up to his injuries, the decedent and Loughin, who had been in a relationship for 15 years and shared three children, were involved in an "[p]retty intense" argument about Loughin's recent abortion. According to Loughin, she blamed the decedent for the abortion and the decedent was "angry" about this. Loughin testified:

> [The decedent and I] were yelling at each other. He was yelling at me and I think I turned the radio up a little bit and he had shut my radio off. I turned it back on and it was not that loud, because he was just yelling at me and then he punched my radio and I started crying. I told him I . . . wanted him out of my life and he said, "Fine, [f**k] it" and jumped out the door or he went out. I don't know. It was like he was there and he was gone.
>
> * * *
>
> I s[aw] he unlocked the door and he just said, "Fine, [f**k] it" and just jumped out.

Thus, the undisputed evidence establishes that Loughin and the decedent were involved in an intense argument and that Loughin had expressed an interest in ending their long-term relationship. See *Schultz*, 212 Mich App at 201-202 (considering evidence of a quarrel as relevant to question of intent where it preceded the plaintiff's deliberate act of jumping from a moving van).

With respect to whether the decedent's act was intentional, Loughin testified that the decedent was not wearing his seatbelt at any relevant time. Although she testified that the decedent had "jumped out" of the vehicle, Loughin later indicated that she could not "say 100 percent [that] he jumped out of [her] vehicle." Instead, Loughin stated that the decedent "was there and . . . was gone[.]" However, Loughin acknowledged that she informed law enforcement that the decedent had "exited [her] vehicle," and the transcript of the 911 call made by Loughin establishes that she indicated that the decedent had "got[ten] out of [her] car when [she] was driving[.]" Additionally, in November and December 2016, Loughin informed a claims representative that the decedent had "jumped" out of the motor vehicle. However, according to the claims representative, Loughin later "changed" her "story" and indicated that the decedent "fell."

To the extent that plaintiffs imply that the door opened as a result of the vehicle malfunctioning as opposed to the decedent opening the door, Loughin testified that the doors on her vehicle automatically locked when it was in motion. Loughin agreed that she had never "had any problem with the locks on the doors," and she indicated that the vehicle would have alerted her if any doors were "ajar." Loughin also agreed that she saw the decedent unlock the door "immediately before he went out of the car[.]" Evidence supports that the vehicle was inspected after the accident. A claims representative testified that, to her recollection, "there was nothing wrong with the vehicle." Thus, the record evidence supports that the decedent, who was not wearing a seatbelt, stated "f**k it," opened the door from inside the moving vehicle, and either fell or jumped out of the vehicle.

Although plaintiffs point out that Loughin was slowing the vehicle because she was approaching a roundabout at the time the decedent opened the door, the record evidence establishes that the decedent opened the door to the vehicle when it was traveling between 30 and 40 miles per hour. There is no evidence that the decedent asked Loughin to stop the vehicle before he opened the door, and the decedent never indicated whether he fell out of the vehicle or whether he jumped out of the vehicle. Additionally, there is no indication that the decedent made an effort to forestall the injuries attendant to falling or jumping from a moving vehicle by, for instance, tucking and rolling. Cf. *Bronson Methodist Hosp*, 198 Mich App at 630 (finding no intent to cause injury where the individual attempted to prevent the harm in question). Drawing all reasonable inferences in defendant's favor, we conclude that reasonable minds could infer that, in the midst of a disagreement, the decedent became upset and leapt from a moving vehicle in order to cause himself injury. Consequently, material questions of fact remain.

We acknowledge that plaintiffs argue to the contrary on appeal. In doing so, however, they highlight evidence that is positive to their claims and invite this Court to impermissibly draw all inferences in their favor. See *Myers*, 304 Mich App at 641. For example, plaintiffs note that the decedent did not verbally express an intent to injure himself, that the decedent did not have a history of mental health issues or suicidal ideation, and that the decedent's death certificate classified the decedent's death as an accident. Plaintiffs also cite the affidavit of Dr. William J. Sanders, which supports that the decedent did not intend to injure himself. Instead, Dr. Sanders opined that, if the decedent opened the door to the vehicle, he did so "because of an impulsive act that was committed in the heat of a very passionate interaction with Ms. Loughin."

Certainly, these are facts and circumstances bearing on the decedent's intent which may be considered by the trier of fact when resolving the question of the decedent's subjective intent.[2] However, we cannot disregard defendant's evidence or resolve factual disputes. See *White*, 275 Mich App at 625. Instead, considering all the evidence presented by the parties, MCR 2.116(G)(5), and viewing this evidence in a light most favorable to defendant, we conclude that material questions of fact remain regarding whether the decedent intentionally exited the moving vehicle and, if so, whether he did so with the intent to injure himself.

Consequently, we conclude that the trial court erred by granting plaintiffs' motions for summary disposition. Although defendant argues that the trial court erred by denying its motion for summary disposition, we disagree given that material questions of fact remain for the reasons already discussed.

III. CONCLUSION

We reverse the trial court's decision to grant plaintiffs' motions for summary disposition and affirm the trial court's decision to deny defendant's motion for summary disposition.[3] Given these holdings, it is necessary to vacate the trial court's January 8, 2020 judgment. We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michelle M. Rick
/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron

[2] In so indicating, we are not commenting on the admissibility of this evidence.

[3] Although the trial court denied defendant's motion because it improperly concluded that the undisputed evidence established that the decedent's injuries were accidental, we will not reverse a trial court's decision if it reached the right result for the wrong reason. See *Gleason v Mich Dep't of Transp*, 256 Mich 1, 3; 662 NW2d 822 (2003).