STATE OF MICHIGAN

COURT OF APPEALS

DRUCILLA MARIE CARTER,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 16, 2021

No. 356609
Wayne Circuit Court
LC No. 19-003431-NI

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

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition to defendant under MCR 2.116(C)(10), in this third-party benefits case. We affirm.

I. FACTUAL BACKGROUND

This case arises out of a motor vehicle accident that occurred on November 19, 2016, on I-75 in Detroit, Michigan. Plaintiff had uninsured motorist (UM) coverage through defendant. According to plaintiff, she was "slowing for an accident ahead . . . when an unknown vehicle swerved into her lane, sideswiped her vehicle and caused [her] vehicle to strike the center median barrier and roll over. The unknown vehicle then fled the scene."

Plaintiff filed a complaint claiming that she "sustained injuries which constitute a serious impairment of a body function." Defendant moved the trial court for summary disposition under MCR 2.116(C)(10), arguing that "Plaintiff did not sustain a serious impairment of a body function . . . ." The trial court dispensed with oral argument and entered an order granting defendant's motion. The trial court concluded that "[t]he need for the hip surgery and the cause of the hip deterioration was not 'as a result' of the motor vehicle accident but long standing deterioration." This appeal followed.

II. STANDARD OF REVIEW

A motion for summary disposition must be supported by depositions, admissions, or other documentary evidence. MCR 2.116(G)(3), (4). The trial court must consider that evidence in the light most favorable to the nonmoving party. *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) when the evidence, viewed in the light most favorable to the nonmoving party, shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The moving party can satisfy its burden in one of two ways: (1) by submitting evidence that negates an essential element of the nonmoving party's claim or (2) by demonstrating the nonmoving party's evidence cannot establish an essential element of the nonmoving party's claim or defense. *Id*. at 362-363. Once the moving party meets that burden, the burden shifts to the nonmoving party to submit evidence establishing that a genuine issue of material fact exists. *Id*. at 362.

When reviewing a motion under MCR 2.116(C)(10), we " 'consider the pleadings, affidavits, depositions, admissions, and other documentary evidence in favor of the party opposing the motion.' " *Williamstown Twp v Sandalwood Ranch, LLC*, 325 Mich App 541, 547 n 4; 927 NW2d 262 (2018), quoting *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). Specifically, the de novo standard of review requires us to review the legal issues at hand without deferring to the trial court. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009).

The de novo standard of review also applies to our interpretation of both Michigan statutes and the Michigan Rules of Court. *State Farm Fire & Casualty Co v Corby Energy Servs, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006); *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). Legal questions are likewise reviewed de novo. *In re Estate of Moukalled*, 269 Mich App 708, 713; 714 NW2d 400 (2006).

III. ANALYSIS

Plaintiff argues that the trial court erred in granting summary disposition because sufficient evidence created a genuine issue of material fact regarding whether she suffered an aggravation of a preexisting condition. We disagree.

The no-fault act, MCL 500.3101, *et seq.*,[1] "created a compulsory motor vehicle insurance program under which insureds may recover directly from their insurers, without regard to fault, for qualifying economic losses arising from motor vehicle incidents." *McCormick v Carrier*, 487 Mich 180, 189; 795 NW2d 517 (2010). Under MCL 500.3135, a party is liable for loss caused to another party if "his or her ownership, maintenance, or use of a motor vehicle" has caused that party to experience "death, serious impairment of a body function, or permanent serious disfigurement." MCL 500.3135(1). MCL 500.3135(5) defines "serious impairment of a body

[1] The Michigan Legislature amended the Michigan no-fault act on June 11, 2019. 2019 PA 21. However, the parties do not dispute the preamendment version of the no-fault act applies in this case.

function" as an "objectively manifested" impairment of an "important body function" that affects the person's "general ability to lead his or her normal life." MCL 500.3135(5)(a) through (c). In other words, it is "an impairment that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function." *McCormick*, 487 Mich at 196. Our Supreme Court has laid out a three-pronged test for establishing a serious impairment of a body function: (1) an objectively manifested impairment (2) of an important body function (3) that affects the person's general ability to lead his or her normal life. *Id*. at 190. Whether a person has suffered serious impairment of a body function or permanent serious disfigurement are questions of law for the court if the court finds either (1) that "there is no factual dispute concerning the nature and extent of the person's injuries" or (2) "there is a factual dispute concerning the nature and extent of the person's injuries" that is not material to the determination of whether the person has suffered a serious impairment or serious disfigurement. *Patrick v Turkelson*, 322 Mich App 595, 607-608; 913 NW2d 369 (2018), quoting MCL 500.3135(2)(a).

Plaintiff challenges the first prong of the no-fault analysis: whether plaintiff suffered an objectively manifested impairment. An objectively manifested impairment is one "that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function." *McCormick*, 487 Mich at 196.

In this case, plaintiff claims that she suffered an objectively manifested impairment attributable to the accident. She argues that the accident served as the triggering event that caused her to have to get hip surgery, but she offers no evidence in support of a causal connection between the surgery and the accident. In fact, the evidence suggests the opposite. For instance, the record reflects that plaintiff occasionally took time off from work before the accident because of hip pain. She had been to physical therapy multiple times and received several injections. She essentially exhausted her nonsurgical treatment options, and as Dr. William Higgenbotham stated a full year before the accident occurred, surgery was her "only option." She began treatment for the hip pain in 2013 but evidence of her left hip condition indicates that it existed as early as 2001. Surgery had been her only option for a year before the accident occurred, and plaintiff offers us no evidence that the accident so aggravated her hip pain that surgery had to be scheduled immediately. Plaintiff claims that she held off on the surgery and, had it not been for the accident, she would have held off indefinitely. Yet again, she offers us no evidence to support her claim. Further, the record indicates that plaintiff went back to work two days after the accident and worked until her surgery. This evidence indicates that whatever hip pain she experienced postaccident constituted pain no more debilitating than that which she experienced before the accident.

Further, plaintiff presented no postaccident evidence of a significant change in her hip condition. Specifically, she provided no postaccident x-rays, MRIs, or other objective medical tests supporting her claim that the accident aggravated her existing hip condition. Her only complaints upon arriving at the hospital on the day of the accident were neck, chest, and back pain—not hip pain. And her position is undermined by the surgery report, which simply describes the exact same left hip pathology that previous examinations revealed, making no reference to the accident being a cause of aggravation.

Finally, plaintiff's argument is unavailing because she relies solely on her own subjective testimony, not "actual symptoms or conditions that someone other than [plaintiff] would observe

or perceive as impairing a body." *McCormick*, 487 Mich at 196-197. "Parties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact." *Karbel v Comerica Bank*, 247 Mich App 90, 97-98; 635 NW2d 69 (2001), quoting *Libralter Plastics v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). "Mere speculation or conjecture is insufficient to establish reasonable inferences of causation." *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 140; 666 NW2d 186 (2003). A theory of causation that is premised on minimal evidence is inadequate. *Skinner*, 445 Mich at 164. Plaintiff's subjective and speculative testimony is insufficient to establish a causal relationship between the accident and the alleged aggravation of her hip pain.

The evidence of plaintiff's chronic health issues undermined plaintiff's ability to establish a causal connection between the accident and her impairment. Plaintiff's condition alleged after the accident so mirrored her preaccident condition that one cannot reasonably conclude that the accident caused or aggravated plaintiff's hip condition. Unlike *McCormick*, in which the plaintiff's impairments stemmed from a single incident, *McCormick*, 487 Mich at 184-188, the impairments in this case were chronic for years and had deteriorated sufficiently preaccident to require surgery and no evidence establishes that her condition changed from the accident. Plaintiff failed to establish an objectively manifested impairment that arose from the accident. Therefore, the trial court did not err in granting summary disposition because no genuine issue of material fact existed that the hip condition requiring surgery resulted from the November 19, 2016 accident.

The record also reflects that plaintiff failed to establish that the accident affected her general ability to lead her normal life. Analysis in this regard "requires a comparison of [her] life before and after the incident." *McCormick*, 487 Mich at 202. In this case, the record reflects that almost no difference existed between plaintiff's life before and after the accident. Evidence established that both before and after the accident, plaintiff had limited ability to walk, stand, move, and sleep. She occasionally took time off from work because of the pain before and after the accident. The only time she needed assistance with basic tasks like cooking, cleaning, and bathing occurred after the surgery, not after the accident. Indeed, she returned to work two days after the accident and continued working until the surgery. At the time of her deposition, she no longer received help with basic household tasks.

Plaintiff's testimony regarding her leisure activities further supports the conclusion that the accident did not affect her ability to live her normal life. She stated that she enjoyed going to "plays, concerts, . . . bike riding, little bit of horseback riding, traveling" before the accident and that she has not been bike riding or horseback riding since the accident. However, the reason for not doing these things was "because [she doesn't] have the desire to." She later stated that she had not done those activities because "sitting [for] a long period of time . . . aggravates my hip," but, as noted above, no evidence established that such aggravation had a causal connection to the accident. Rather, the evidence indicates that her hip pain had been ongoing for many years. Likewise, plaintiff stated that she enjoyed going to plays before the accident but admitted she had not attended any plays since the accident simply because she "[j]ust ha[d]n't had interest in going to any of the plays." She has continued to attend concerts and travel. The record reflects no noticeable difference in plaintiff's life and her ability to do her preferred activities before and after the accident. Michigan law supports the conclusion that the alleged impairments in this case did not affect plaintiff's normal life. In *McDanield v Hemker*, 268 Mich App 269, 280-282; 707 NW2d

211 (2005), where the plaintiff lost the ability to do nearly all work and recreational activities as a result of an accident, this Court noted that comparing her "life before and after the accident is [like] . . . comparing day to night." In this case, by contrast, plaintiff's life before and after the November 2016 accident indicates that she experienced the same limitations. Accordingly, plaintiff's claim also failed as a matter of law in this regard. Therefore, the trial court did not err by granting defendant summary disposition of plaintiff's claim.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Riordan
/s/ James Robert Redford