STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL ALAN BALTRUSAITIS,

Plaintiff-Appellant,

v No. 106928

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,

and

REX STINSON and NANCY STINSON,

Defendants.

Before: Shepherd, P.J., and Holbrook, Jr. and McDonald, JJ.

PER CURIAM.

The circuit court granted summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant, the no-fault insurer providing coverage of plaintiff's claim for personal protection insurance benefits based on work loss. We reverse.

The accident occurred on March 28, 1986. At that time, plaintiff, a high school senior, was unemployed because a job would have interfered with his participation in the varsity baseball season. Prior to that time, plaintiff held part-time jobs at a bowling alley from December 12, 1985 until February 1986 (earning $70 to $80 per week) and for about a month in February of 1986 at a gasoline station (earning $50 per week). In May of 1986, plaintiff graduated from high school, notwithstanding injuries sustained in the accident. As of his deposition on February 27, 1987, plaintiff had not worked since the accident due to his injuries and pain. Plaintiff had not applied for any jobs or taken any other steps towards securing employment, other than an informal inquiry with a friend employed at the gasoline station where he previously worked. Although plaintiff had vague plans to further his education, financing his way by work, he had not taken any steps toward enrollment in college or selected a particular field of study.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for the claim. It should be granted if the court, giving the benefit of every reasonable doubt to the opposing party, determines that it is impossible for the claim to be supported at trial because of some deficiency that cannot be overcome. Metropolitan Life Ins Co v Reist, 167 Mich App 112, 118; 421 NW2d 592 (1988), lv den 431 Mich 876 (1988). In order to avoid summary disposition, the party opposing the motion must demonstrate the existence of a genuine issue of material fact by affidavits, depositions, admissions, or other documentary evidence; mere allegations or assertions in the pleadings contradicting the movant's properly supported factual position are insufficient. Morganroth v Whital, 161 Mich App 785, 788-789; 411 NW2d 859 (1987); MCR 2.116(G)(4). The courts should be liberal in finding a genuine issue of material fact: Williams v Johns, 157 Mich App 115, 118; 403 NW2d 516 (1987).

Work-loss benefits are provided by MCL 500.3107(b); MSA 24.13107(b) for "loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he had not been injured." By providing that work loss is statutorily determined for the temporarily unemployed on the basis of earned income in the last month of full-time employment preceding the accident, MCL 500.5107a; MSA 24.13107(1) acknowledges that the unemployed status of the injured person does not per se preclude benefits.

The issue determinative of the instant case is one of causation, i.e., whether plaintiff's lack of earned income was caused by the disabling injuries sustained in the vehicular accident:

> "[W]ork-loss benefits are available to compensate only for that amount that the injured person would have received had his automobile accident not occurred. Stated otherwise, work-loss benefits compensate the injured person for income he would have received but for the accident." MacDonald v State Farm Mutual Ins Co, 419 Mich 146, 152; 350 NW2d 233 (1984).

In Kennedy v Auto-Owners Ins Co, 87 Mich App 93; 273 NW2d 599 (1978), this Court addressed a claim for work-loss

benefits by a temporarily unemployed college student who had previously worked part-time during the school year and full-time during summer:

> "Defendant contends that the Legislature intended to compensate only those temporarily unemployed persons who intended to return to the same job or at least to a similar, full-time job. We do not think the Legislature so intended to limit the class of unemployed persons eligible for benefits. Nothing in the statute expressly limits eligibility for work loss benefits to full-time employees. . . . We think a reasonable interpretation of the statute requires a finding that the Legislature intended to compensate accident victims for all loss of income, whether from full-time or part-time employment, resulting from injuries suffered in an automobile accident. Clearly, if plaintiff can show that he would have been employed part-time or seasonally but for his injury, he has suffered loss of income as a result of that injury, for which loss he should be compensated." Id., 96-97 (footnote omitted).

Thus, the plaintiff, who had intended to work part-time during the academic year following the accident, was deemed to be entitled to wage-loss benefits.

Similarly, in Swartout v State Farm Mutual Automobile Ins Co, 156 Mich App 350; 273 NW2d 599 (1978), this Court reversed summary disposition entered in favor of the no-fault insurer, holding that the plaintiff, a nursing student, would be entitled to benefits for wage loss attributable to anticipated earnings upon her completion of her education. Evidence of the plaintiff's projected employment if she had not been injured created a genuine issue of material fact as to whether the plaintiff had sustained a loss of actual income, as opposed to a loss of earning capacity.

The decisions in Kennedy and Swartout teach that plaintiff in this case is not precluded from benefits simply because he voluntarily left a part-time job to pursue a transient activity. What remains to be decided is whether a genuine issue of material fact has been established regarding a loss of actual income caused by the accident.

Plaintiff had a prior demonstrated work record ending shortly before the accident. He professed an intention to seek gainful employment after the baseball season ended. He attributed his lack of employment to physical disability, pain,

and uncertainty as to his physical limitations. Under these circumstances, we are not convinced that plaintiff's case is so factually deficient that he cannot possibly prevail at trial. Although there is some suggestion in the record that plaintiff's lack of employment is due to his lack of motivation, that is more properly for the trier of fact to evaluate.

Reversed and remanded.

/s/ John H. Shepherd
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald