

STATE OF MICHIGAN
COURT OF APPEALS

VIRGINIA BROWN,

Plaintiff-Appellant,

September 2, 1993

v

No. 151108

LC No. 91-114873

CITY OF DETROIT,

Defendant-Appellee.

Before: Weaver, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

In this no-fault action brought pursuant to MCL 500.3135(1); MSA 24.13135(1), plaintiff appeals as of right from the trial court's March 13, 1992, order granting defendant's motion for summary disposition and dismissing the case with prejudice. We affirm the order of the trial court.

Plaintiff first contends that the trial court erred in ruling that she must submit an affidavit in response to defendant's motion for summary disposition. Plaintiff asserts that the trial court put form over substance when it ruled that Dr. Saha's statement in letter form, and not in the form of a sworn affidavit, did not satisfy her burden of showing that a genuine issue of material fact existed. MCR 2.116(C)(10). We disagree with plaintiff.

The party opposing a motion for summary disposition has the burden of establishing that a genuine issue of material fact exists in response to a properly filed and supported motion for summary disposition. Pantely v Garris & Garris, PC, 180 Mich App 768, 773; 447 NW2d 864 (1989). The adverse party may not rest upon the mere allegations or denials contained in the pleadings, but must, "by affidavits or as otherwise provided" in the rule, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4). Affidavits, depositions, admissions, or other documentary evidence may be submitted by a party to support or oppose the grounds asserted in the motion. MCR 2.116(G)(2).

Defendant's motion for summary disposition was properly made and supported. Plaintiff's response to defendant's motion contained three attachments: Dr. Patel's report; a letter from plaintiff's physician, Dr. Saha; and plaintiff's affidavit. At the original hearing on defendant's motion, the trial court indicated that it did not have enough information to render a decision. Plaintiff's counsel stated that she needed to obtain the medical records regarding plaintiff's knee injury and that she did not believe Dr. Saha's letter indicated that the accident exacerbated plaintiff's prior knee injury. The court stated that it was going to give plaintiff "a little bit more time," and instructed plaintiff's counsel to "get whatever records and an affidavit from the Doctor" to the effect that the accident exacerbated plaintiff's prior knee injury. Defense counsel was instructed to take plaintiff's deposition.

Plaintiff filed a supplemental brief on February 27, 1992, indicating that she had recently treated with Dr. Saha and was waiting for his report. Plaintiff also stated that she had no further medical records to submit to the court. On March 13, 1992, the hearing on defendant's motion for summary disposition was continued, and plaintiff presented a second letter from Dr. Saha. The court refused to rely on the letter which was not under oath.

We are of the opinion that the trial court was correct in refusing to rely on Dr. Saha's unsworn letter. Opinions, conclusionary denials, unsworn averments, and inadmissible hearsay do not suffice in establishing

the existence of a genuine issue of material fact. SSC v Detroit Retirement System, 192 Mich App 360, 364; 480 NW2d 275 (1991). The unsworn letter was insufficient to support plaintiff's position because it was hearsay. Id., pp 364-367. The trial court did not err in requiring the submission of an affidavit by plaintiff.

Plaintiff also contends that the trial court erred in ruling that Dr. Saha's affidavit did not create a question of fact as to a serious impairment of body function. Again, we disagree.

Plaintiff filed a motion for reconsideration of the trial court's order granting defendant's motion for summary disposition. In support thereof, plaintiff presented an affidavit from Dr. Saha. The trial court denied plaintiff's motion, finding that "Dr. Saha's affidavit does not create a question of fact as to causation of serious impairment of body function by the subject accident." We agree with the trial court.

In this case, reasonable minds could not differ on whether plaintiff sustained a serious impairment of body function. DiFranco v Pickard, 427 Mich 32, 38, 59; 398 NW2d 896 (1986). Dr. Saha's affidavit did not reveal the existence, extent or permanency of an impairment sustained by plaintiff. Id., pp 39, 67, 75. Additionally, the affidavit does not create a question as to whether plaintiff's noneconomic losses arose out of a medically identifiable injury which seriously impaired a body function. Id., pp 40, 75.

Dr. Saha's affidavit states that after plaintiff's right knee surgery, she was not complaining of any pain; after the accident, she began complaining of pain in the right knee and was taking Motrin for the pain; after the accident, plaintiff complained of dizziness, nervousness, depression, insomnia, and memory loss, and was taking Xanax for her nervousness and depression; a CAT scan revealed no atrophy of the brain. The affidavit merely talks in terms of complaints and does not suggest a medically identifiable injury. The affidavit is conspicuously silent as to the existence, extent, and permanency of an impairment.

The only treatment received by plaintiff for the alleged injury to her knee was the taking of Motrin; however, plaintiff was taking Motrin prior to the accident as a result of the knee surgery. Furthermore, plaintiff was instructed by Dr. Struthers to call if the knee was giving her any problems. Plaintiff testified that she never called Dr. Struthers for an appointment. There is nothing to indicate that the accident exacerbated plaintiff's prior knee problem. Also, Dr. Saha's affidavit does not even mention headaches or a closed head injury.

We are of the opinion that the trial court properly granted defendant's motion for summary disposition. No reasonable jury could possibly view plaintiff's alleged impairment as serious.

Affirmed.

/s/ Elizabeth A. Weaver
/s/ Kathleen Jansen

I concur in result only.

/s/ William B. Murphy