STATE OF MICHIGAN

COURT OF APPEALS

TED A. CARPENTER,

Plaintiff-Appellant,

v

YOLANDA KNIGHT,

Defendant-Appellee.

UNPUBLISHED
March 21, 2006

No. 257581
Ingham Circuit Court
LC No. 03-000411-NI

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant under MCR 2.116(C)(10). The trial court determined that summary disposition was appropriate because plaintiff had not demonstrated that he suffered an objectively manifested injury as required by MCL 500.3135(1) and (7). We affirm.

"This Court reviews de novo the grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law." *Moore v Cregeur*, 266 Mich App 515, 517; 702 NW2d 648 (2005), citing *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.166(C)(10), the court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden*, *supra* at 120. "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." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Under MCL 500.3135(1), a person is subject to tort liability for noneconomic loss caused by his use of a motor vehicle "only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." As used in this section, "serious impairment of body function" is defined 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(7). If there is no material factual dispute concerning the nature and extent of the injured person's injuries, whether the injured person has suffered a serious impairment is a

question of law for the courts. MCL 500.3135(2); *Williams v Medukas*, 266 Mich App 505, 507; 702 NW2d 667 (2005).

It is undisputed that plaintiff had preexisting injuries to his back. These injuries were ostensibly medically identifiable injuries. See *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002) (noting that, in order for an injury to be "objectively manifested", there must be a medically identifiable injury or condition that has a physical basis). However, plaintiff presented no evidence of a medically identifiable change in his preexisting condition. Likewise, although a plaintiff may recover where the trauma caused by an accident triggers symptoms from a preexisting condition, *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000), the plaintiff still has the burden to show the causal link between the accident and the aggravation of the preexisting condition. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). In the present case, plaintiff failed to present evidence that he suffered a medically identifiable injury or aggravation of a preexisting injury, which was caused by the accident in question.

At his deposition, plaintiff admitted that no doctor ever diagnosed his injuries as having been exacerbated by the accident. Indeed, the only evidence that such an aggravation occurred are plaintiff's own statements to that effect. These conclusory statements are insufficient to create a fact question on the issue of causation. *Quinto v Cross & Peters Co*, 451 Mich 358, 371-372; 547 NW2d 314 (1996).

Plaintiff also attempts to characterize a pre-accident medical evaluation, which stated he could return to work in two months, as proof that he was recovering before the accident. Plaintiff then contrasts this report with a post-accident evaluation that stated that plaintiff was indefinitely unable to return to work due to problems with mobility. However, these documents do not specifically opine that plaintiff's mobility problems were caused by the accident at issue. The inference plaintiff draws from these documents is nothing more than speculation and conjecture, which are not sufficient to establish a genuine issue of material fact. *Detroit v Gen Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998). Further, this inference requires the fact-finder to conclude that, because the accident preceded the manifestation of the symptoms, the symptoms must have stemmed from the accident. "But this reasoning invokes the fallacy of *post hoc, ergo propter hoc*: merely because one event follows another does not mean that the first event caused the second." *Tipton v William Beaumont Hosp*, 266 Mich App 27, 37; 697 NW2d 552 (2005).

In sum, none of plaintiff's evidence provides any basis for finding that plaintiff's condition was caused by the accident. It is insufficient "to submit a causation theory that, while factually supported, is, at best, just as possible as another theory. Rather, the plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994). The trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Peter D. O'Connell