STATE OF MICHIGAN

COURT OF APPEALS

DENIS T. AKAAZUA,

Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 11, 2011

No. 298384
Kent Circuit Court
LC No. 09-004195-NF

Before: GLEICHER, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Plaintiff was injured in an April 21, 2008 car accident when he "clunked" heads with a fellow passenger. Defendant, as plaintiff's no-fault insurance provider, paid plaintiff's medical costs until October 21, 2008, when plaintiff's own doctors concluded that he either was purposefully exaggerating the extent of his injury or was suffering from an unknown and unrelated psychological malady. The trial court summarily dismissed plaintiff's first-party no-fault action, finding that after October 21, 2008, his claimed injuries lacked any connection to the motor vehicle accident. We affirm.

We review a trial court's decision on a motion for summary disposition de novo. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. 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. [*Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004) (internal quotations and citations omitted).]

MCL 500.3105(1) of the Michigan No-Fault Act provides that "[u]nder personal protection insurance an 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." (Emphasis added.) MCL 500.3107(1), in turn, provides for the payment of "allowable expenses" in connection with the insured's accidental bodily injury arising out of the motor vehicle accident.

In *Griffith v State Farm Mut Automotive Ins Co*, 472 Mich 521, 531; 697 NW2d 851 (2005), our Supreme Court described an insurer's liability for benefits as follows:

> First, an insurer is liable only if benefits are "*for* accidental bodily injury . . . ." "[F]or implies a causal connection. "[A]ccidental bodily injury" therefore triggers an insurer's liability and defines the scope of that liability. Accordingly, a no-fault insurer is liable to pay benefits only to the extent that the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident.
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> Second, an insurer is liable to pay benefits for accidental bodily injury only if those injuries "aris[e] out of" or are caused by "the ownership, operation, maintenance or use of a motor vehicle . . . ." It is not *any* bodily injury that triggers an insurer's liability under the no-fault act. Rather, it is only those injuries that are caused by the insured's use of a motor vehicle. [Alterations and emphasis in original.]

The causation element has been described as "more than incidental, fortuitous, or 'but for.'" *Thornton v Allstate Ins Co*, 425 Mich 643, 659 (1986); see also *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 634 (1997).

Here, the entirety of the evidence, including the reports of plaintiff's own doctors, establishes that plaintiff did not have any injury "arising out of" or caused by the car accident. Immediately following the motor vehicle accident, plaintiff was transported to the emergency room by ambulance. Plaintiff complained of head and neck pain, but the examining physician saw no signs of trauma and CT scans were normal. Based *solely* on plaintiff's subjective complaints, the doctor noted a possible concussion and cervical sprain, but released plaintiff without restrictions. In fact, plaintiff requested the doctor to excuse him from one week of work, but the doctor did not find that warranted. Plaintiff failed to follow up with his primary care physician until July 29, 2008, but wanted the doctor to declare him disabled effective April 21. Plaintiff complained of continued head and neck pain, as well as nausea and short-term memory loss. Plaintiff's physician noted that plaintiff was alert, oriented, and ambulatory and showed no sign of "focal neural deficits."[1] The doctor rejected defendant's request to declare him disabled and referred him for physical therapy and a concussion assessment at the Mary Free Bed Rehabilitation Hospital. During subsequent appointments, plaintiff's primary care physician noted that he was uncooperative with testing. When the doctor tried to conduct a neuromuscular examination, plaintiff refused to exert any physical effort, thereby exaggerating his weakness. Over a year after the accident, plaintiff continued to exaggerate symptoms during examinations but behaved in a normal manner in the doctor's presence both before and after the exam.

Prior to visiting Mary Free Bed, defendant scheduled an independent medical examination for plaintiff. The independent physician noted plaintiff's "abnormal pain behavior"

[1] As noted by witness Kelly Teft, examples of focal neural deficits include "facial droop, inability to move an extremity, [or] a tremor."

in response to a light touch on the skin of his neck, but declined to render any opinion until plaintiff submitted to MRIs.

Plaintiff subsequently began evaluation and treatment at Mary Free Bed. Psychologist Carrie-Ann Strong conducted an in-take evaluation of plaintiff and noted that he "exhibited cognitive problems that were way out of proportion to the mild nature of his injury, especially since he was injured about 5 months ago." Dr. Strong prematurely ended the evaluation based on her suspicion of plaintiff's behavior, noting "Even with severe brain injury, I would not expect such a poor performance on that particular, relatively easy task. It is also noteworthy that patient is driving. Clearly, that level of impairment would not be expected in someone who is driving." Dr. Strong recommended psychological evaluation and personality testing to "further investigate the possible role of psychological and somatic factors."[2]

Dr. Stephen Bloom then conducted a concussion assessment on plaintiff at Mary Free Bed. Dr. Bloom noted that plaintiff moved normally until the doctor attempted to formally evaluate his ambulation. Plaintiff complained of dizziness, but vestibular (inner ear) testing was "completely normal." Dr. Bloom noted "a number of inconsistencies and red flags" on plaintiff's neuro-psychological screening. The doctor's formal impression was:

> Inconsistent presentation with cognitive deficits out of proportion with objective findings. It is doubtful that what we see is consistent with concussion or brain injury, and we need to rule out comorbid psychologic entities versus secondary gain with report of an attorney being involved in the case versus malingering.[3]

Dr. Bloom also recommended further psychological evaluation to determine if plaintiff's "presenting symptoms are valid."

Dr. Strong proceeded to administer a Minnesota Multi-Phasic Personality Inventory (MMPI) on plaintiff. Dr. Strong could not interpret the results because plaintiff "left an extraordinarily high number of responses blank." However, plaintiff answered enough questions on the "validity scale" for Dr. Strong to assess whether plaintiff engaged in "non-credible reporting of somatic and cognitive symptoms." Dr. Strong noted that plaintiff's score did "suggest possible symptom magnification, particularly in the absence of any significant verifiable medical problem." Overall, Dr. Strong felt that plaintiff's reported "symptoms . . . are out of proportion to the nature of his injury," especially in light of the MMPI results and plaintiff's "dramatic presentation during the assessment." After continuing treatment at Mary Free Bed, Dr. Bloom noted on October 21, 2008, that plaintiff showed no evidence of brain injury and self-magnified his symptoms and pain.

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[2] "Somatic" factors are imaginary symptoms, such as when one's illness is "all in one's head."

[3] Dr. Bloom apparently felt that plaintiff had underlying psychological issues that caused him to exaggerate his current condition or that plaintiff was purposefully exaggerating his condition in order to pursue legal remedies.

Plaintiff apparently experienced a "resurgence" of his symptoms after filing suit. On May 31, 2009, plaintiff fainted while having a heated argument with a neighbor. Even then, examining physicians found no evidence of brain trauma and CT scans, MRIs and MRAs were all normal. Because plaintiff reported weakness in his extremities, he was transferred to an inpatient rehabilitative center. Physician's assistant Kelly Teft examined plaintiff at the center and noted that his cognitive and neurological examinations were normal. Teft suspected that plaintiff was malingering (pretending or exaggerating incapacity to avoid duty or work) because he limited his range of motion during the physical examination but had a broader range of motion both before and after.

The first and only medical report suggesting that plaintiff had any potential injury was prepared on June 10, 2009, more than 13 months after the car accident. However, even that report does not support plaintiff's theory that he was injured in the accident. Rather, following plaintiff's fainting spell, Dr. Dalene DeGraf of the Mary Free Bed Hospital recommended that plaintiff pursue stroke rehabilitation.

Contrary to plaintiff's assertion, the trial court did not engage in improper fact finding or credibility assessments. See *Skinner v Square D Co*, 445 Mich 153, 161-162; 516 NW2d 475 (1994). Rather, all the evidence, when viewed in the light most favorable to plaintiff, showed that plaintiff had no objective signs of injury following the motor vehicle accident. Medical professionals, including those personally selected bb plaintiff, debunked plaintiff's subjective complaints based on his uncooperative and exaggerated behaviors, which occurred only during formal medical and mental examinations. The evidence potentially suggests that plaintiff suffered a stroke on May 31, 2009, 13 months after the car accident. However, nothing in the record implies that plaintiff suffered a stroke because of the earlier car accident. Moreover, given the complete lack of evidence of any actual injury in the 13-month interim, plaintiff has not created a genuine issue of material fact that any potential injury "arose out of" or was caused by the motor vehicle accident. Absent any causal connection, defendant is not liable to pay benefits to plaintiff and the trial court properly dismissed plaintiff's claim.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens