

STATE OF MICHIGAN  
COURT OF APPEALS

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TRAVIS TURNER III,

Plaintiff-Appellant,

v

FOUNDERS INS CO,

Defendant-Appellee.

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UNPUBLISHED

September 29, 2005

No. 261140

Kent Circuit Court

LC No. 03-010032-NI

Before: Saad, P.J., and Jansen and Markey, JJ.

MEMORANDUM.

In this action to recover wage-loss benefits under Michigan's no fault act, MCL 500.3107(b), plaintiff appeals as of right from a trial court order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff was involved in an automobile accident on December 11, 2000 for which he received wage-loss benefits from defendant until June 3, 2001. At that point, defendant terminated plaintiff's benefits. Plaintiff filed his complaint on October 13, 2003, and claimed that defendant wrongfully terminated his benefits and that he was owed benefits because he had been unable to regain employment as an automotive mechanic during the remainder of the thirty-six-month statutory wage-loss benefit period. The trial court granted defendant's motion for summary disposition on several grounds: plaintiff failed to give notice of wage loss prior to one year before filing suit; he failed to mitigate his damages, and he failed to establish a nexus between the injuries he sustained in the automobile accident and his failure to obtain employment.

In reviewing an order granting summary disposition under MCR 2.116(C)(10), a reviewing court examines all relevant documentary evidence in a light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists on which reasonable minds could differ. *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). 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 v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Here, the only facts disputed by plaintiff are the doctor's report that there was a job waiting for plaintiff in 4 to 6 weeks, and that plaintiff's pain was completely resolved by October, 2001. However, these facts are not material to disposition of this case because

plaintiff's claim is restricted by the "one-year back" rule under MCL 500.3145 to losses occurring in the year preceding his claim. There is no basis for disputing that during that period, any wage losses suffered by plaintiff were not causally related to his injuries because he admitted to having been able to find employment at any time in any number of jobs and because he contended in federal pleadings that the reason for his lack of employment was due to a conspiracy of government agents, not his injuries. *MacDonald v State Farm Ins Co*, 419 Mich 146, 153-154; 350 NW2d 233 (1984). Additionally, plaintiff also failed to mitigate his damages when he refused to take other employment and by refusing to attend prescribed physical therapy. *Marquis v Hartford Indemnity*, 444 Mich 638, 651; 513 NW2d 799 (1994).

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey