# STATE OF MICHIGAN

# COURT OF APPEALS

GARY RICHARD STANNY,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 9, 2008

No. 280916
Wayne Circuit Court
LC No. 06-606447-NF

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of an automobile accident on June 3, 2005, in which plaintiff was injured. Plaintiff sought work-loss benefits pursuant to MCL 500.3107(1)(b) from defendant, his no-fault insurer. Plaintiff had previously been employed as an independent contractor, and he held a regular job for five years until 1997, when his employer moved to California and plaintiff did not wish to follow. Thereafter, plaintiff performed a few odd jobs on a sporadic basis, but he did not work at all after 2000, and he apparently would not have returned to the job market but for the subsequent downturn in the stock market. At the time of the accident, plaintiff had been submitting résumés to various potential employers, but he had only received one response and no interview offers.

Work-loss benefits are payable under MCL 500.3107(1)(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 or she had not been injured." Work-loss benefits are intended to compensate the injured person for income he would have received but for the accident. *MacDonald v State Farm Mut Ins Co*, 419 Mich 146, 152; 350 NW2d 233 (1984). If the injured person was "temporarily unemployed at the time of the accident," work-loss benefits may still be recovered. MCL 500.3107a. At issue here is whether plaintiff was unemployed or merely temporarily unemployed at the time of the accident. Defendant contends that plaintiff was unemployed and the evidence did not show that he would have returned to work but for the accident. The trial court agreed.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists warranting a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "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, supra*.

MCL 500.3107a was enacted "to address the implication created by § 3107(1)(b) that one must actually be employed at the time of the accident to qualify for work-loss benefits." *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 468; 521 NW2d 831 (1994). "The phrase 'temporarily unemployed' . . . refers to the unavailability of employment, not the physical inability to perform work," *MacDonald, supra* at 153, and thus § 3107a applies "only to those individuals confronted with a temporary and complete unavailability of work." *Popma, supra* at 470. Thus, when a person becomes unemployed voluntarily rather than due to the unavailability of work, he is not temporarily unemployed. *Sullivan v North River Ins Co*, 238 Mich App 433, 436 n 2; 606 NW2d 383 (1999). Nevertheless, where the totality of the circumstances suggest that a voluntarily unemployed person would have returned to work but for the accident, he may be entitled to work-loss benefits under § 3107(1)(b). *Id.* at 438.

We agree with the trial court that, on the facts of this case, plaintiff here was not "temporarily unemployed" at the time of the accident. Plaintiff left employment by choice, rather than because no employment was available, and he remained unemployed for a considerable length of time prior to the accident. Although he had initiated a search for employment by the time of the accident, the totality of the circumstances provided no evidence that he would have returned to employment but for the accident.[1] Plaintiff therefore cannot show that his unemployment was "temporary."

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis

---

[1] We do not offer any view as to *how* certain such future employment, but for the accident, must be in order to satisfy this test. We need not address that question in this case because, here, there was no evidence adduced that there was *any* such probability.