

STATE OF MICHIGAN  
COURT OF APPEALS

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CHARLES MCLAREN,

Plaintiff-Appellant,

v

EMCASCO INSURANCE COMPANY, a/k/a  
EMPLOYERS MUTUAL CASUALTY  
COMPANY,

Defendant-Appellee.

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UNPUBLISHED

March 17, 2009

No. 277582

Ionia Circuit Court

LC No. 06-024617-NI

Before: Markey, P.J., and Sawyer and Kelly, JJ.

PER CURIAM.

In this action for noneconomic losses for serious bodily impairment under the no fault act, MCL 500.3103 *et seq.*, the trial court determined that plaintiff failed to proffer evidence of causation and granted defendant summary disposition. Plaintiff appeals as of right. We affirm.

Plaintiff alleged he sustained cervical and lumbar injuries in an automobile accident in January 2004. Plaintiff's medical records indicate that plaintiff had a history of cervical and lumbar conditions that existed before the accident. Because the other driver involved in the accident was uninsured, plaintiff brought this action against his insurer pursuant to the uninsured motorist provision of the insurance contract. MCL 500.3135. Defendant moved for summary disposition under MCR 2.116(C)(10). The trial court granted the motion because the documentary evidence failed to establish that the automobile accident caused plaintiff's injuries.

Plaintiff argues that the trial court erred when it determined that plaintiff failed to prove causation. More specifically, plaintiff contends that the symptoms he experienced after the accident were different and more severe than his symptoms before the accident and that the post-accident treatments he received, including a cervical fusion, manifest a causal connection between the accident and his conditions. We disagree. We review de novo the resolution of a motion for summary disposition. *Spectrum Health v Grahl*, 270 Mich App 248, 251; 715 NW2d 357 (2006). A motion for summary disposition under MCR 2.116(C)(10) should be granted if there is no genuine issue as to any material fact and 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).

A person may pursue a claim under the no fault act where the person suffers "serious impairment of body function" caused by another's negligent use of a motor vehicle. MCL

500.3135(1). In such instances, plaintiff must prove that the defendant's negligence was the proximate cause of the alleged injuries.<sup>1</sup> See *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). "'Proximate cause' is a legal term of art that incorporates both cause in fact and legal (or 'proximate') cause." *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004). In *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994), our Supreme Court defined these terms as follows:

The cause in fact element generally requires showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. On the other hand, legal cause or "proximate cause" normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences. [Citations omitted.]

"As a matter of logic, a court must find that the defendant's negligence was a cause in fact of the plaintiff's injuries before it can hold that the defendant's negligence was the proximate or legal cause of those injuries." *Craig, supra* at 87. With respect to preexisting conditions, "recovery is allowed if the trauma caused by the accident triggered symptoms from that [preexisting] condition." *Wilkinson, supra* at 395.

Here, the fact that plaintiff's symptoms became worse after the accident does not establish, in and of itself, that the accident caused the worsened symptoms. Notably absent in the record is any medical documentation or expert testimony indicating that the accident triggered an exacerbation of plaintiff's symptoms.<sup>2</sup> To the contrary, the records are clear that plaintiff had herniated discs and degenerative spinal problems prior to the accident. Similarly, plaintiff's claim that defendant admitted causation in plaintiff's previous lawsuit against defendant seeking personal protection insurance (PIP) benefits is unavailing. As this Court recently explained, the causation standard in a PIP action under MCL 500.3105(1) is distinct from the proximate cause standard applicable in this action. See *Scott v State Farm Mut Automobile Ins Co*, 278 Mich App 578, 583-585; 751 NW2d 51 (2008), citing *Kochoian v Allstate Ins Co*, 168 Mich App 1, 8-9; 423 NW2d 913 (1988).

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<sup>1</sup> As noted, *supra*, this action is premised on an uninsured motorist provision. Such provisions allow "an injured motorist to obtain coverage from his or her own insurance company to the extent that a third-party claim would be permitted against the at-fault negligent driver." *Rory v Continental Ins Co*, 473 Mich 457, 465; 703 NW2d 23 (2005). Typically, liability would be a matter of contract interpretation. *Id.* at 465-466. In this matter, however, it appears that the parties presume that plaintiff's insurance contract incorporates the proximate cause standard.

<sup>2</sup> On appeal plaintiff offers an incompletely dated half-page medical questionnaire signed by his neck surgeon, which states that plaintiff required surgery as a result of the injuries he sustained in the automobile accident. However, plaintiff did not present this questionnaire in the trial court. This Court cannot consider materials not presented to the trial court when reviewing its ruling on a motion for summary disposition. See *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817(1999).

Given our conclusion that the record contains no evidence to support plaintiff's claim that the accident caused his injuries, we need not address plaintiff's remaining arguments. We note, however, that to the extent plaintiff asserts on appeal that his claim for excess economic damages should survive summary disposition, we find that plaintiff has abandoned the argument because plaintiff failed to cite any supporting authority. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Affirmed.

/s/ Jane E. Markey  
/s/ David H. Sawyer  
/s/ Kirsten Frank Kelly