

STATE OF MICHIGAN
COURT OF APPEALS

LINDA KAYL,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee,

and

AAA MICHIGAN,

Defendant.

UNPUBLISHED

June 30, 2009

No. 284752

Wayne Circuit Court

LC No. 06-612437-NI

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although substantively admissible evidence submitted at the time of the motion must be viewed in the light most favorable to the party opposing the motion, the non-moving party must come forward with at least some evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

Although the trial court provided no explanation for its ruling other than to state that "there exists no genuine issue of material fact," we must still affirm the trial court's ruling because plaintiff had not submitted with her response to defendant's motion for summary disposition any documentary evidence or testimony showing that she had submitted bills to defendant for treatment that occurred after April 2005. A parties' duty in responding to a properly supported motion for summary disposition is to come forward with some evidentiary proof, as opposed to promises of producing such proof, to show to the trial court that a genuine

issue of material fact exists for trial. *Maiden, supra* at 120-121; MCR 2.116(G)(4). Here, defendant's argument was that plaintiff was not entitled to reimbursement for an allowable expense under MCL 500.3107 because plaintiff never produced any evidence to show that an expense was incurred. See *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 50; 457 NW2d 637 (1990). In responding to this argument, plaintiff only submitted an unsigned, unnotarized affidavit, which, even if signed and notarized, did not contain any evidence that she submitted bills to Allstate for services rendered (post April 2005) as a result of the 1994 accident. And, none of the evidence referenced or quoted in plaintiff's response addressed whether plaintiff submitted bills to defendant.

Additionally, the motion transcript does not reflect a concession by defendant that the bills were submitted, but instead shows that defendant's counsel maintained this position during the hearing but did argue about the validity of the medical evidence proffered by plaintiff. That evidence, however, did not address whether plaintiff had submitted bills to defendant showing that the costs had been incurred. Accordingly, because plaintiff failed to meet her burden in opposing defendant's motion for summary disposition, the trial court must be affirmed.¹ *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996).

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray

¹ It is also noteworthy to point out that although plaintiff came forward with documentary evidence and a more detailed and properly signed and notarized affidavit in support of her motion for reconsideration, the trial court did not abuse its discretion in denying that motion because there is no reason why such evidence could not have been presented before the trial court's decision on defendant's motion for summary disposition. MCR 2.119(F)(3); *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).