

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UNPUBLISHED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.

STEPHENS, J. (*dissenting*)

I would reverse the lower court's grant of defendant's motion for summary disposition and remand for further proceedings. The trial court incorrectly ruled that plaintiff failed to meet her burden of opposing defendant's motion. Plaintiff's argument is premised on the fact that she suffered a knee injury in 1994 and that since that time she has had problems with her knee for which she incurred allowable expense. The initial motion claimed that plaintiff never submitted any bills that were incurred as a result of her knee injury. However, at oral argument counsel for the defense conceded that the bills had been received and were not paid. Defendant argued that there was no proof of a causal connection between the billed items and the 1994 accident. Defendant further agreed that plaintiff offered an excerpt from an expert report that connected the knee treatments to the 1994 accident. That report was contrary to the expert report offered by defendant. At oral argument, defendant questioned whether plaintiff's expert knew of an intervening accident in which plaintiff was involved. This was an effective challenge to credibility, but where both parties offered evidentiary support for their position a question of fact remains for the trier of fact to resolve. Consequently, it was improper to grant summary disposition in favor of defendant.

/s/ Cynthia Diane Stephens