

STATE OF MICHIGAN
COURT OF APPEALS

DARREN MILLER,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

February 27, 2001

No. 218957

Genesee Circuit Court

LC No. 97-061124-NF

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff contends that the trial court erred in dismissing his complaint that defendant had wrongfully refused to pay work loss and replacement services benefits after he was injured in an automobile accident. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). We review de novo a trial court's grant or denial of a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is proper if no genuine issue of material fact exists, thereby entitling the moving party to judgment as a matter of law. *Id.*

Work loss and replacement services are both compensable. MCL 500.3107(1)(b), (c); MSA 24.13107(1)(b), (c). However, where a plaintiff is unable to show that a compensable loss has been incurred, "there can be no finding of a breach of the insurer's duty to pay that expense, and thus no finding of liability with regard to that expense." *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 50; 457 NW2d 637 (1990).

Plaintiff submitted a claim for work loss benefits, stating that he had been employed by a car wash company where he earned \$30 to \$40 a day. As provided under the terms of the policy, defendant sought verification from the employer, who responded that plaintiff did not work for

him. Plaintiff was unable to provide any documentation verifying his employment. Plaintiff also submitted a claim for replacement services benefits. He never provided any documentation indicating the nature of the services and who provided them and when. Because the evidence did not show that defendant had wrongfully refused to pay compensable losses at the time plaintiff filed his complaint, the trial court did not err in granting defendant's motion.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell