STATE OF MICHIGAN

COURT OF APPEALS

PETRINA MAGLINGER,

Plaintiff-Appellant,

v

STATE FARM INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 16, 2006

No. 270851
Macomb Circuit Court
LC No. 2005-000802-NF

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition to defendant pursuant to MCR 2.116(C)(10) with respect to plaintiff's claim for no-fault attendant care benefits. Because a question of fact exists on the issue of causation with respect to plaintiff's entitlement to attendant care benefits for the period of February 24, 2004 to date, we reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in a motor vehicle accident on February 3, 1995. Her injuries included a closed head injury. An operative report, dated February 10, 1995, indicated that there was injury to the right temporal region and impairment to the frontal and occipital regions. A surgical procedure was performed to correct the injuries. A hospital consultation report, dated February 14, 1995, indicates that there was a significant loss of consciousness and that plaintiff complained of memory problems.

On February 28, 2005, plaintiff filed this action for personal injury protection benefits, including attendant care, pursuant to MCL 500.3107(1)(a). Plaintiff alleged that attendant care was necessary because of her closed head injuries. Defendant moved for summary disposition, challenging plaintiff's ability to show that the need for attendant care, if any, was causally related to the 1995 accident. The trial court found that there was no genuine issue of material fact regarding causation and granted defendant's motion.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." In evaluating a motion under this subrule, the court must view the evidence submitted by the parties in a light most favorable to the party opposing the motion. *Maiden, supra* at 120.

When the evidence is viewed in the light most favorable to plaintiff, there is a question of fact regarding whether plaintiff needed attendant care during the one-year period before the complaint was filed,[1] and whether any need for attendant care was caused by the 1995 accident. Dr. Amberg's opinions changed throughout the three dates he was deposed. Ultimately, after reviewing hospital records concerning the accident that showed injuries to the areas of plaintiff's brain that correlated with impairments shown by neuropsychological testing, he believed that plaintiff's incapacity to function was related to the accident, assuming that her account that she was unable to function following the accident was accurate. Dr. Bleiberg prescribed attendant care and related the need to neuropsychological impairment. Based on Dr. Amberg's evaluation, he linked plaintiff's dementia to head trauma. Dr. Faremouth opined in a letter that plaintiff's "rapid decline [in cognitive functioning] is related to the brain injury suffered ten years ago." Although he had not prescribed attendant care, he indicated in his deposition that he would have done so if plaintiff's companion were not there to organize her medicine and help her.

Cause in fact may be established by circumstantial evidence, but such proof "must facilitate reasonable inferences of causation, not mere speculation." *Skinner v Square D Co*, 445 Mich 153, 163-164; 516 NW2d 475 (1994). The correlation between the injuries and the impairment was adequate to create an issue of fact that should be submitted to the trier of fact.

Reversed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

[1] The trial court granted defendant partial summary disposition with respect to any benefits accruing before February 28, 2004. See *Devillers v Auto Club Ins Ass'n*, 473 Mich 562; 702 NW2d 539 (2005); MCL 500.3145(1). Plaintiff does not challenge this ruling on appeal.