

STATE OF MICHIGAN
COURT OF APPEALS

KASSAUNDRA CARTER,

Plaintiff-Appellant,

v

STATE FARM INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 28, 2006

No. 263809

Wayne Circuit Court

LC No. 03-338740-NF

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting a directed verdict in favor of defendant in this no-fault insurance case. We affirm.

Plaintiff's first issue on appeal is whether the trial court erred in allowing her to proceed in propria persona. Plaintiff raises this issue for the first time on appeal and, therefore, it is unpreserved. *Mayor of the City of Lansing v Public Service Commission*, 257 Mich App 1, 19; 666 NW2d 298 (2003). Unpreserved issues are reviewed for plain error. To avoid forfeiture under the plain error rule, the error must have occurred, it must have been plain; i.e., clear or obvious, and it must have affected substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Plaintiff has the right under the Michigan State Constitution, art I, § 13, "to prosecute or defend his suit, either in his own proper person or by an attorney." On appeal, plaintiff argues that the trial court should have questioned her competency because both a neuropsychological evaluation she underwent on July 28, 2003, and her actions at trial revealed that she was incompetent. Plaintiff correctly quotes the neuropsychological report as stating that: (1) she "demonstrated relatively unsophisticated communicative reciprocity manifested by a pattern of frequent interjections, very poor eye contact, and exaggerated gesticulations," and (2) her "immediate recall was within the moderately to severely impaired range," and her verbal comprehension was "generally low average."

However, plaintiff cites from the report very selectively. The conclusion of the evaluation was that plaintiff, while varying in performances across tests of verbal learning and memory, "presented a neuropsychological profile most consistent with an individual who is functioning within normal limits cognitively and intellectually." The report opines that "inconsistencies within and between neuropsychological assessments suggest the likelihood that

Ms. Carter was selectively cooperative,” and that “several aspects of her personality and psychopathology profile are suggestive of symptom exaggeration.” The report also mentions plaintiff’s “possible motivation for secondary gain” as underlying her behavior. It is noteworthy that plaintiff’s own physician referred her to the psychologist and psychology intern who completed this examination and prepared this report.

Plaintiff also argues that the trial transcript reveals that she was incompetent because her direct testimony was incomprehensible and because she makes unintelligible and hostile remarks intermittently. Specifically, plaintiff’s brief on appeal notes that the trial court had to explain to her what an opening statement was, and that she blurted out several times that she was taking her case to the Supreme Court.

Plaintiff’s poor performance was not unexpected. Our legal system favors representation of litigants by counsel. *Friedman v Dozorc*, 412 Mich 1, 49-50; 312 NW2d 585 (1981). In criminal cases, the trial court must warn plaintiff of the dangers and disadvantages of self-representation because of the special skills and training necessary to effectively handle most cases. *People v Russell*, 471 Mich 182, 190-191; 684 NW2d 745 (2004); *People v Kimber*, 133 Mich App 184, 189; 348 NW2d 60 (1984). A defendant who succeeds in asserting his right to self-representation will be held to the same standards of presentation as a member of the bar, and his errors and omissions cannot be the basis of a successful appeal on the ground of ineffective assistance of counsel. *Baird v Baird*, 368 Mich 536, 539; 118 NW2d 427 (1962).

We conclude that the trial court did not have reason to question the competency of plaintiff and, therefore, did not err by allowing plaintiff to proceed in propria persona.¹ While the neuropsychological evaluation indicated that plaintiff had problems with communication and memory, the ultimate conclusion was that plaintiff’s profile fell within normal cognitive and intellectual levels. Plaintiff’s performance during the trial and unfamiliarity with court procedure does indicate that she made a poor choice by proceeding in propria persona, as the trial court warned her, but nothing seems to suggest that she was mentally incompetent.

We add that even if plaintiff had been able to prove her incompetence to proceed in propria persona, given that this is a civil matter quite unrelated to the possible deprivation of physical liberty, our case law does not mandate the appointment of counsel: “the due process right to appointed counsel is triggered by . . . [a litigant’s] fundamental interest in physical liberty.” *Mead v Batchlor*, 435 Mich 480, 498; 460 NW2d 493 (1990). There are extensions of this rule that go beyond the contours of physical liberty, but insurance settlements are not among them. See *Artibee v Cheboygan Circuit Judge*, 397 Mich 54; 243 NW2d 248 (1976) (“An indigent defendant in a paternity action has a right to appointed counsel. Paternity proceedings are quasi-criminal. The interests of the affected individuals are substantial and the proceedings are sufficiently complex to require counsel to insure a fair trial.”); *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986) (“MCR 5.906(C)(2)(b) provides that counsel must be

¹ We note that documents filed in the trial court indicate that plaintiff was represented pre-trial by two successive attorneys, and after the second attorney withdrew, plaintiff indicated she wanted to represent herself, against the advice of the trial court.

appointed to represent indigent parents at hearings to terminate parental rights. The right to appointed counsel at such proceedings is also a fundamental constitutional right guaranteed by the equal protection clauses of the United States and Michigan Constitutions.”). The case law indicates that while the delineation does not mirror the line between criminal proceedings and civil proceedings, still the right to appointed counsel attaches only where significant personal liberty interests are at stake.

Plaintiff’s second issue on appeal is whether the trial court erred in granting defendant’s motion for a directed verdict. This Court reviews de novo the trial court’s decision on a motion for a directed verdict. *Zantel Marketing Agency v Whitesell Corporation*, 265 Mich App 559, 568; 696 NW2d 735 (2005). A directed verdict is appropriate only when no factual question exists on which reasonable jurors could differ. *Cacevic v Simplimatic Engineering Co (On Remand)*, 248 Mich App 670, 679-680; 645 NW2d 287 (2001). The appellate court reviews all the evidence presented up to the time of the directed verdict motion, considers that evidence in a light most favorable to the nonmoving party, and determines whether a question of fact existed. *Cacevic, supra* at 679.

Plaintiff’s sole argument on appeal for this issue is that the documents plaintiff produced at trial raised a question of fact regarding the cause and severity of plaintiff’s injuries. Plaintiff, however, neither identifies which documents she is referring to nor discusses how they raise a question of fact. A party may not simply announce its position and leave it to this Court to discover and rationalize the basis for the party’s claim. *Badiee v Brighton Area Schools*, 265 Mich App 343, 357; 695 NW2d 521 (2005). “Facts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court.” MCR 7.212(C)(7). This Court will not search the record for factual support for plaintiffs’ claims. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004). An appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). By failing to argue this issue on appeal, plaintiff has abandoned it.²

Plaintiff’s third issue on appeal is that the granting of defendant’s motion for a directed verdict denied plaintiff her right to a jury trial. We disagree.

MCR 2.515 provides that “A party may move for a directed verdict at the close of the evidence offered by an opponent.” Plaintiff argues that MCR 2.515 violates her right to a trial

² Mindful of plaintiff’s in propria persona status at trial, we reviewed the lower court record as to this issue. As the trial court noted, plaintiff was “seeking under the No Fault Act payment of medical bills, prescription bills, and attendant care.” We note that plaintiff failed to present any evidence that she incurred medical expenses or that any expenses she did incur were the result of the accident. Plaintiff therefore failed to meet her burden. *Nasser v Auto Club Ins Ass’n*, 435 Mich 33, 50; 457 NW2d 637 (1990) (“Where a plaintiff is unable to show that a particular, reasonable expense has been incurred for a reasonably necessary product and service, 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.”)

by jury. It should first be determined what the right to a jury trial entails. A party's right to a jury trial does not restrict our Supreme Court's power to dictate matters of procedure, but rather, only ensures the party an opportunity to have a jury determine disputed issues of fact within the procedural framework established by the Court. *Great Lakes Gas Transmission Limited Partnership v Markel*, 226 Mich App 127, 133, 573 NW2d 61 (1997). “Juries traditionally do not decide the law or the outcome of legal conflicts To maintain the traditional role of the jury, the jury must remain the factfinder; a jury may determine what happened, how, and when, but it may not resolve the law itself.” *Phillips v Mirac, Inc*, 470 Mich 415, 427; 685 NW2d 174 (2004), quoting *Charles Reinhart Co v Winiemko*, 444 Mich 579, 601; 513 NW2d 773 (1994).

While the role of the jury relates to disputed facts, a directed verdict is appropriate only when no factual question exists on which reasonable jurors could differ. *Cacevic, supra* at 679-680. The appellate court reviews all the evidence presented up to the time of the directed verdict motion, considers that evidence in a light most favorable to the nonmoving party, and determines whether a question of fact existed. *Cacevic, supra* at 679. When a directed verdict is appropriate, there is no question of fact for the jury to decide and the trial court must rule on the case as a matter of law. A jury does not resolve issues of law. We conclude that MCR 2.515 does not infringe upon plaintiff’s right to a jury trial because plaintiff was granted an opportunity for the jury to determine all disputed issues of fact.

Affirmed.

/s/ Stephen L. Borrello

/s/ Janet T. Neff

/s/ Jessica R. Cooper