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STATE OF MICHIGAN

COURT OF APPEALS

FAIROOZ DANKHA,

Plaintiff-Appellant,

v

JAMES A. WRIGHT, DHEYAA AL-QASSAB, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, and LM GENERAL INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
December 16, 2021

No. 355066
Wayne Circuit Court
LC No. 19-014628-NI

Before: CAVANAGH, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of State Farm Mutual Automobile Insurance Company (State Farm), and dismissing her claims against State Farm, LM General Insurance Company (Liberty Mutual), and Dheyaa Al-Qassab.[1] On appeal, plaintiff argues the trial court abused its discretion by dismissing her claims as a discovery sanction. She also argues the trial court erred by dismissing her claims against Liberty Mutual and Al-Qassab because they did not move for summary disposition independently of State Farm. Finding no error or abuse of discretion, we affirm.

I. FACTS

This case arises out of a car accident that allegedly occurred in October of 2016. Plaintiff asserts she was riding as a passenger with Al-Qassab[2] as the driver. Al-Qassab slammed on his brakes, and James A. Wright—who was driving behind Al-Qassab—rear-ended their vehicle.

[1] Defendant James A. Wright is not involved in this appeal. According to plaintiff's attorney, Wright entered into a settlement agreement with plaintiff and was dismissed.

[2] When referring to defendants individually, we will identify them by name. When referring to defendants collectively, we will use "defendants."

Simultaneously, the driver behind Wright rear-ended Wright. At the end of March of 2017, plaintiff sued State Farm for personal injury protection (PIP) benefits. Six months later, the trial court dismissed plaintiff's claims without prejudice because plaintiff failed to appear for a deposition and failed to appear for an insurance medical examination (IME).

A little over two years later, on October 31, 2019, plaintiff again sued State Farm, and this time also sued Liberty Mutual and Al-Qassab. She renewed her claim for PIP benefits against State Farm and this time also brought a claim for uninsured and underinsured motorist (UM/UIM) benefits against State Farm. Plaintiff sued Liberty Mutual for UM/UIM benefits and Al-Qassab for third-party economic damages in excess of the no-fault threshold. The trial court issued a scheduling order setting discovery cutoff at June 11, 2020. The scheduling order stated that, within 28 days of its entry, plaintiff was required to identify her service providers and employer, as well as provide medical record authorizations to defendants.

State Farm answered plaintiff's complaint on January 14, 2020. But plaintiff did not serve Al-Qassab with her initial disclosures until April 1, 2020, Liberty Mutual until May 4, 2020, and State Farm until June 2, 2020.[3] In her initial disclosures to defendants, plaintiff provided little to no information about her healthcare providers or employer, or about any medical bills or balances for which she sought reimbursement. She also provided no signed medical record authorizations.

Plaintiff's deposition was noticed for April 2, 2020. According to plaintiff's counsel, this deposition did not occur because of technical difficulties. Plaintiff's deposition was rescheduled for June 18, 2020, but it does not appear that the deposition took place. According to State Farm's counsel, plaintiff never appeared for an IME or an examination under oath (EUO) and failed to file a police report after the accident. In the record, there is no deposition transcript, no IME report, and no evidence that plaintiff appeared for an EUO.

Plaintiff failed to respond to most of defendants' discovery requests. When plaintiff did respond, she either provided perfunctory answers or else untimely served responses containing little if any appreciable information about her alleged injuries or monetary damages. As to State Farm, she responded to its request for admissions but denied everything without elaboration. Plaintiff also responded to State Farm's request for production and its first set of interrogatories at the end of March of 2020, 71 days after State Farm had served its request. The substance of plaintiff's responses to these requests is not in the record, but there is nothing to suggest plaintiff provided State Farm with any of the documents it requested or provided substantial answers to its interrogatories. Plaintiff failed to respond to State Farm's second set of interrogatories. Liberty Mutual served plaintiff with a request for admissions, a request for production, two requests for medical authorizations, and two sets of interrogatories. Plaintiff responded only to Liberty Mutual's request for admissions, denying everything without elaboration. Al-Qassab served plaintiff with a request for production and interrogatories, but plaintiff responded to neither.

[3] The initial disclosures that plaintiff attached to her "motion for reinstatement" indicate they were served on all parties on April 1, 2020. But in that motion, plaintiff stated that she served State Farm with her initial disclosures on June 2, 2020, and served Liberty Mutual with her initial disclosures on May 4, 2020. She stated the same in her brief on appeal.

When plaintiff failed to respond, each defendant moved to compel. At the same time, plaintiff objected to defendants' interrogatories, arguing that the trial court should strike them because defendants had each included more than 20 interrogatories in contravention of MCR 2.309(A)(2). The trial court did not hold a hearing on defendants' motions or plaintiff's objection and issued no order.

A month before the discovery cutoff date, State Farm moved for summary disposition seeking the dismissal of plaintiff's claims as unsupported by any evidence. First, citing MCR 2.313(B)(2), State Farm argued that the trial court should dismiss plaintiff's claims as a discovery sanction. Second, State Farm argued that plaintiff's UM/UIM claim should be dismissed because plaintiff failed to appear for an IME. Third, State Farm argued the one-year-back rule, MCL 500.3145(1), would prevent plaintiff from recovering any damages because plaintiff's last medical treatment occurred in November of 2017. Though Al-Qassab did not file his own motion for summary disposition, Al-Qassab filed a concurrence with State Farm's motion and noted that plaintiff did not respond to discovery requests and failed to provide signed authorizations for the release of medical records. Liberty Mutual did not file a motion or concurrence.

In response to State Farm's motion for summary disposition, plaintiff argued that "discovery [was] still on-going" and, therefore, State Farm's motion for summary disposition was premature. She also noted that she provided an initial disclosure. Further, plaintiff alleged that she executed medical authorizations and answered discovery requests. But as State Farm argued in its reply brief, plaintiff provided no evidence to corroborate her assertions. And as the non-moving party, plaintiff was required to oppose the motion for summary disposition with evidence but she attached no exhibits or documentation to her response. Accordingly, State Farm argued, its motion must be granted and plaintiff's claims dismissed.

On July 30, 2020, the trial court issued a written opinion dismissing all of plaintiff's claims with prejudice. The trial court noted: "Despite four years of litigation across two lawsuits, Plaintiff has not provided a single document, a medical record, or a bill to show this Court that there is anything at issue in this case or that any genuine issue of material fact exists for a trier of fact." The trial court noted that plaintiff repeatedly failed to provide any discovery to defendants and, given plaintiff's "serial and repeated violations," it was left with no option but to dismiss plaintiff's claims with prejudice. The court noted that plaintiff's response to defendant's motion—that discovery was on-going—was insufficient to defeat the motion, particularly when she had done nothing whatsoever in this case. Because plaintiff failed to provide any evidence, failed to attend an IME, and failed to file a police report, the trial court dismissed the case with prejudice.

About two weeks later, plaintiff filed a motion titled "Plaintiff's Motion For Relief From July 30, 2020 Order And To Reinstate Case Nunc Pro Tunc," asking the trial court to reinstate her claims against defendants—but only her "UM/UIM claims" and claims against Liberty Mutual and Al-Qassab. Plaintiff's counsel admitted that "there are no PIP claims." The trial court denied plaintiff's motion. This appeal followed.

II. STANDARDS OF REVIEW

We review de novo a trial court's ruling on a motion for summary disposition. *Heaton v Benton Constr Co*, 286 Mich App 528, 531; 780 NW2d 618 (2009). "Under MCR 2.116(C)(10),

summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Piccione v Gillette*, 327 Mich App 16, 19; 932 NW2d 197 (2019) (quotation marks and citation omitted).

> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996) (internal citations omitted).]

A trial court's decision to impose discovery sanctions is reviewed for an abuse of discretion. *Elahham v Al-Jabban*, 319 Mich App 112, 135; 899 NW2d 768 (2017). A trial court abuses its discretion when its decision is outside the range of principled outcomes. *PCS4LESS, LLC v Stockton*, 291 Mich App 672, 676-677; 806 NW2d 353 (2011). The trial court's interpretation and application of court rules is reviewed de novo. *Dep't of Human Servs v Laird (In re Sanders)*, 495 Mich 394, 404; 852 NW2d 524 (2014).

III. ANALYSIS

Plaintiff argues that the trial court abused its discretion by dismissing her claims as a discovery sanction. She suggests the trial court lacked authority to sanction her because she did not violate a court order. We disagree.

To begin, plaintiff did fail to comply with a court order. The trial court's scheduling order required plaintiff to (1) identify her service providers and employer and (2) provide medical authorizations—both within 28 days of the order's entry. Plaintiff failed to establish that she complied with the scheduling order. While plaintiff's counsel alleged plaintiff provided her medical authorizations, there is nothing in the record corroborating this, and the representations of counsel are not evidence or stipulations of fact under MCR 2.116(A). See *Zantop Int'l Airlines, Inc v E Airlines*, 200 Mich App 344, 364; 503 NW2d 915 (1993), citing SJI2d 3.04.

Even if plaintiff had not violated a court order, the trial court still had authority to dismiss plaintiff's claims as a discovery sanction. As this Court and our Supreme Court have held, trial courts "possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action." *Swain v Morse*, 332 Mich App 510, 521; 957 NW2d 396 (2020), quoting *Maldonado v Ford Motor* Co, 476 Mich 372, 376; 719 NW2d 809 (2006) (quotation marks omitted). "This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Swain*, 332 Mich App at 521-522, quoting *Maldonado*, 476 Mich at 376.

Along with its inherent authority, a trial court may dismiss a party's case when the party fails to comply with the court rules. *Swain*, 332 Mich App at 519-520, citing MCR 2.504(B)(1). Because plaintiff failed to comply with MCR 2.302(A), in addition to its inherent authority, the trial court had authority under MCR 2.313(C)(1)(c) and MCR 2.504(B)(1) to dismiss plaintiff's claims against all three defendants.

MCR 2.302(A)(2)(b) requires a plaintiff claiming no-fault benefits to provide certain initial disclosures to the other parties:

> (2) *Additional Disclosures for No-Fault Cases*. In addition to the disclosures under subrule (A)(1), in a case asserting a first-party claim for benefits under the Michigan no-fault act, MCL 500.3101, *et seq*., the following disclosures must be made without awaiting a discovery request:
>
> * * *
>
> (b) The plaintiff must disclose all applicable claims, including all of the following information within the plaintiff's possession, custody, or control:
>
> (i) the identity of those who provided medical, household, and attendant care services to plaintiff,
>
> (ii) all provider bills or outstanding balances for which the plaintiff seeks reimbursement,
>
> (iii) the name, address, and phone number of plaintiff's employers, and
>
> (iv) the additional disclosures under subrule (A)(3). [MCR 2.302(A)(2)(b)].

MCR 2.302(A)(3) requires "[a] party claiming damages for injury arising from a mental or physical condition" to "provide the other parties with executed medical record authorizations in the form approved by the State Court Administrative Office . . . ." MCR 2.302(A)(5) requires "[a] party that files a complaint . . . [to] serve its initial disclosures within 14 days after any opposing party files an answer to that pleading." MCR 2.302(A)(5)(b)(i).

State Farm answered plaintiff's complaint on January 13, 2020. As a result, plaintiff's initial disclosures were due by January 27, 2020. Yet plaintiff admits she did not provider her initial disclosures to Al-Qassab until April 1, 2020, to Liberty Mutual until May 4, 2020, and to State Farm until June 2, 2020. And not only were her initial disclosures untimely, they were incomplete. When plaintiff finally provided her initial disclosures, she omitted information required by MCR 2.302(A)(2)(b). She failed to identify who provided medical, household, and attendant services to her, she failed to give provider bills or outstanding balances for which she sought reimbursement, she failed to give information about her employer, and she failed to give signed medical authorizations.

Because plaintiff failed to provide this information, the trial court had authority under MCR 2.313(C)(1) to dismiss plaintiff's claims. MCR 2.313(C) states:

> (1) *Failure to Disclose or Supplement*. If a party fails to provide information or identify a witness as required by MCR 2.302(A) or (E), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
>
> * * *
>
> (c) may impose other appropriate sanctions, including any of the orders listed in MCR 2.313(B)(2)(a)-(c). [MCR 2.313(C)(1)(c)].

The sanctions listed under MCR 2.313(B)(2)(a) through (c) are:

> (a) an order that the matters regarding which the order was entered or other designated facts may be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
>
> (b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters into evidence;
>
> (c) an order striking pleadings or parts of pleadings, staying further proceedings until the order is obeyed, *dismissing the action or proceeding or a part of it*, or rendering a judgment by default against the disobedient party[.] [MCL 2.313(B)(2)(a) through (c) (emphasis added)].

The trial court also had authority to dismiss plaintiff's claims under MCR 2.504(B)(1), which states:

> (B) Involuntary Dismissal; Effect.
>
> (1) If a party fails to comply with these rules or a court order, upon motion by an opposing party, or sua sponte, the court may enter a default against the noncomplying party or a dismissal of the noncomplying party's action or claims. [MCR 2.504(B)(1)].

Nevertheless, plaintiff argues that the trial court abused its discretion in exercising its authority. We again disagree.

"Dismissal is a drastic step that should be taken cautiously." *Swain*, 332 Mich App at 518, quoting *Brenner v Kolk*, 226 Mich App 149, 163; 573 NW2d 65 (1997). Generally, "[s]evere sanctions such as default or dismissal are predicated on a flagrant or wanton refusal to facilitate discovery that typically involves repeated violations of a court order." *Swain*, 332 Mich App at 518. Before dismissing a case as a sanction, "the trial court is required to carefully evaluate all

available options on the record and conclude that the sanction of dismissal is just and proper." *Vicencio v Ramirez*, 211 Mich App 501, 506-507; 536 NW2d 280 (1995), citing *Hanks v SLB Mgt, Inc*, 188 Mich App 656, 658; 471 NW2d 621 (1991). In deciding whether dismissal would be just and proper, a trial court should consider the following nonexhaustive list factors:

> (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. [*Swain*, 332 Mich App at 524, citing *Vicencio*, 211 Mich App at 507].

Dismissal is generally reserved for those circumstances in which a party has flagrantly refused to facilitate discovery. *Thorne v Bell*, 206 Mich App 625, 633; 522 NW2d 711 (1994). Under circumstances justifying dismissal, a party will often have "a history of recalcitrance or deliberate noncompliance with discovery orders[.]" *Id.* at 633-634.

Considering the foregoing factors, the trial court did not abuse its discretion. Although the trial court did not verbatim recite the above factors or discuss other available sanctions, the trial court's reasoning implies it considered both. Perhaps weighing most heavily in the trial court's calculus was plaintiff's history of deliberate delay. As the trial court noted, it had already dismissed plaintiff's case without prejudice because of plaintiff's failure to cooperate with discovery: plaintiff failed to provide deposition testimony and submit to an IME in the first iteration of this case. The trial court also considered whether plaintiff had made efforts to cure defects resulting from her conduct, concluding that despite having her case dismissed once, plaintiff still refused to cooperate with discovery. Finally, the trial court considered whether dismissal was the sanction that would best serve the interests of justice. The trial court noted that dismissal without prejudice had not worked to remedy plaintiff's recalcitrant conduct, implying that a sanction lesser than dismissal with prejudice would not be justified.

Plaintiff, however, argues that the trial court's reasoning does not justify dismissal. She contends that all of the factors from *Vicencio*, 211 Mich App at 507, weigh in her favor. First, plaintiff argues that the record shows her violations were inadvertent because (a) she responded to State Farm's discovery requests, (b) she appeared for deposition (even though it could not be completed because of technical difficulties), and (c) her responses were delayed only because of COVID-19 lockdown orders. Second, plaintiff argues her discovery violations from her prior case should not be considered as to her claims against Liberty Mutual and Al-Qassab because they were not parties to the original case. And, even if her prior discovery violations are relevant, plaintiff argues, she still does not have a history of deliberate delay. According to plaintiff, this is because she settled with Wright and objected to Al-Qassab's and Liberty Mutual's discovery requests. Third, she argues that her violations were not prejudicial because State Farm had a copy of the police report from her accident. Fourth, plaintiff asserts she cured any defects by eventually responding to defendants' discovery requests. Fifth, plaintiff contends a lesser sanction would better serve the interests of justice because discovery was still open when the trial court dismissed plaintiff's claims.

To begin, few of the arguments that plaintiff advances are factually accurate. There is nothing to suggest State Farm had a copy of the police report before plaintiff filed it with her "motion for reinstatement." Plaintiff contends the police officers listed on the report were on State Farm's witness list, and so plaintiff reasons State Farm had a copy of the police report. But neither officer was listed on State Farm's witness list. And even if they were, this would not mean State Farm necessarily had a copy of the police report. Next, there is nothing in the record showing plaintiff's deposition could not go forward because of technical difficulties, or that plaintiff had trouble responding to defendants' discovery requests because of COVID-19 lockdown orders. Plaintiff's counsel alleges that this was the case, but the representation of a party's counsel is not evidence. See *Zantop Int'l Airlines, Inc*, 200 Mich App at 364. Finally, discovery had been closed for nearly two months at the time the trial court dismissed plaintiff's case. The discovery deadline was June 11, 2020, and the trial court dismissed plaintiff's case on July 30, 2020.

Even plaintiff's arguments with factual support are unavailing. First, though plaintiff did respond to some discovery requests, this does not mean the rest of plaintiff's violations were inadvertent—especially considering that her answers were incomplete, evasive, and untimely. Second, plaintiff provides no authority for her argument that the trial court could not consider plaintiff's prior discovery violations when deciding whether to dismiss her claims against Liberty Mutual and Al-Qassab; thus, we need not consider this argument. See *Movie Mania Metro, Inc v GZ DVD's Inc*, 306 Mich App 594, 605-606; 857 NW2d 677 (2014) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.") (citation omitted). Besides, this argument is baseless. Our caselaw instructs trial courts to consider "whether there exists a history of deliberate delay." See, e.g., *Vicencio*, 211 Mich App at 507. Third, plaintiff fails to explain how her settling with Wright, or objecting to defendants' interrogatories, is relevant to whether she engaged in deliberate delay. Plaintiff's settlement with another defendant has no bearing on whether she cooperated with the discovery requests of State Farm, Liberty Mutual, or Al-Qassab. And even if defendants asked plaintiff more interrogatories than allowed under MCR 2.309(A)(2), she fails to explain why she could not have answered at least 20 of the interrogatories. Fourth, that plaintiff eventually responded to some of State Farm's and Liberty Mutual's discovery requests and untimely provided her initial disclosures to all three defendants did nothing to cure any prejudice to them. As already discussed, in her initial disclosures, plaintiff neglected to provide the information required by MCR 2.302(A)(2)(b). And in her responses to State Farm's and Liberty Mutual's requests for admissions, she simply denied everything without elaboration. Also, while the contents of her response to State Farm's requests for production and interrogatories are unknown, plaintiff offers nothing to indicate her responses contained any information of substance. In short, the trial court did not abuse its discretion in dismissing plaintiff's case as a discovery sanction.

And, further, because plaintiff failed to provide any evidence whatsoever to support her claims, the trial court was also correct to dismiss plaintiff's claims under MCR 2.116(C)(10).

Under the no-fault insurance act, MCL 500.3101 *et seq*., an insurer is liable to pay PIP benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, regardless of fault. *Walega v Walega*, 312 Mich App 259, 266-267; 877 NW2d 910 (2015), citing MCL 500.3105(1). "In exchange for ensuring certain and prompt recovery for economic loss," *McCormick v Carrier*, 487 Mich 180, 189; 795 NW2d 517

(2010), negligent drivers are generally immune from tort liability arising from the ownership, maintenance, or use of a motor vehicle. *Johnson v Recca*, 492 Mich 169, 175; 821 NW2d 520 (2012). But if a negligent driver causes a person to suffer death, serious impairment of body function, or permanent serious disfigurement, the injured person may sue the negligent driver for noneconomic damages. MCL 500.3135(1); *McCormick*, 487 Mich at 189-190. A serious impairment of body function is "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life. *Id*. at 190, quoting MCL 500.3135(7).

The no-fault act does not require insurers to provide UM/UIM benefits. *Stoddard v Citizens Ins Co of America*, 249 Mich App 457, 460; 643 NW2d 265 (2002), citing *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 470; 556 NW2d 517 (1996). Therefore, "the language of the insurance policy determines the conditions of coverage." *Stoddard*, 249 Mich App at 460. "An insurance policy that is clear and unambiguous must be enforced in accordance with its terms." *Id*. "Where the terms of an insurance policy are ambiguous, the ambiguity must be construed against the insurer and in favor of the insured." *Id*.

Plaintiff here offered no evidence to show she was entitled PIP benefits under the no-fault act or to UM/UIM benefits under either State Farm's or Liberty Mutual's policy. She also offered no evidence to support her third-party claim against Al-Qassab. Indeed, plaintiff offered nothing beyond the allegations in her complaint. Plaintiff points out that when State Farm moved for summary disposition discovery was still open. Plaintiff is correct that summary disposition is usually considered premature "if granted before discovery on a disputed issue is complete." *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 723; 909 NW2d 890 (2017). But when a party fails to show that further discovery presents a fair likelihood of uncovering factual support for his or her position, the trial court should grant the moving party's motion. *Id*. at 723-724. Plaintiff failed to show that further discovery would present a fair likelihood of uncovering factual support for her position. In response to State Farm's motion for summary disposition, plaintiff merely argued that summary disposition would be inappropriate because "discovery [was] on-going." But plaintiff presented no evidence she had any claim whatsoever. She did not even explain what evidence she hoped to uncover should the trial court deny State Farm's motion for summary disposition. And by the time this matter was dismissed on July 30, 2020, the discovery period had ended.

Though plaintiff does not contend that she presented any evidence to support her claims against Liberty Mutual and Al-Qassab, plaintiff argues on appeal that the trial court erred by dismissing these claims because only State Farm formally moved for summary disposition. Plaintiff contends Al-Qassab's concurrence was improper. Plaintiff also suggests Liberty Mutual and Al-Qassab were required to provide evidence to show they were entitled to have plaintiff's claims against them dismissed. Both of these arguments lack merit.

MCR 2.116(I)(1) states: "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." "Under this rule, a trial court has authority to grant summary disposition sua sponte, as long as one of the two conditions in the rule is satisfied." *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). Hence, the trial court had authority to grant summary disposition in favor of Liberty Mutual and Al-Qassab sua

sponte. And neither Liberty Mutual nor Al-Qassab had to offer evidence for the trial court to be able to do so. As our Supreme Court has held, if a party does not bear the burden of proof on a claim, that party may be granted summary disposition if he or she "demonstrate[s] to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Quinto*, 451 Mich at 362. Because plaintiff bore the initial burden of proof, neither Liberty Mutual nor Al-Qassab were obliged to provide any evidence. In short, the trial court had the authority to enter judgment in favor of Liberty Mutual and Al-Qassab as a matter of law, even if they did not file formal motions for summary disposition. And given that plaintiff provided no evidence to substantiate any of her claims, the trial court was correct to do so.

Plaintiff next argues that the trial court erred in granting State Farm's motion for summary disposition because State Farm "cited MCR 2.313 as the authority for the relief sought in its [motion]." This argument lacks merit as well.

Plaintiff implies that State Farm predicated its whole motion for summary disposition on plaintiff's discovery misconduct. This is inaccurate. In its motion for summary disposition, State Farm argued that no evidence supported plaintiff's claims. State Farm also argued that plaintiff had failed to comply with the terms of State Farm's policy, that she had failed to appear for an IME as required by MCL 500.3135, and that the one-year-back rule barred her from recovering damages. State Farm's argument that plaintiff's case should be dismissed as a discovery sanction was only one component of State Farm's motion, and plaintiff provides no authority showing that a party cannot ask for discovery sanctions in a motion for summary disposition under MCR 2.116(C)(10). Thus, this Court need not further consider this argument. See *Movie Mania Metro, Inc*, 306 Mich App at 605-606.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Michael J. Kelly