

STATE OF MICHIGAN
COURT OF APPEALS

BILLY JOE CHANDANAIS, JR.,
Plaintiff-Appellant,

UNPUBLISHED
November 17, 2011

v

No. 300933
Roscommon Circuit Court
LC No. 09-727755-NI

SAMANTHA WILSON,

Defendant-Appellee,

and

MARY WILSON,

Defendant.

Before: KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals by right from the summary disposition dismissing his claims of serious impairment of body function pursuant to MCL 500.3135(1), and of intentionally caused harm pursuant to MCL 500.3135(3)(a). Because we conclude that the record presents no material factual issues regarding whether the incident at issue caused the alleged serious impairment or regarding whether defendant intentionally harmed plaintiff, we affirm.

Plaintiff's claims arose out of a series of events that began at a party. Plaintiff and defendant both consumed alcohol at the party, and defendant had an altercation with plaintiff's girlfriend. After plaintiff and his girlfriend left the party, defendant drove to plaintiff's home. The altercation between defendant and the girlfriend reignited. Plaintiff attempted to separate the two women and demanded that defendant leave. Defendant got into her car, floored the accelerator with the car in reverse, and backed into plaintiff, catching his leg between her car and a parked car. Plaintiff went to the emergency room and reported significant pain in his lower left leg. Medical personnel found no broken bones and advised plaintiff to use crutches and to follow up with his personal physician. During the next year, plaintiff continued to have leg pain.

On appeal, plaintiff first argues that genuine factual issues precluded summary disposition on the issue of whether defendant intentionally caused harm to plaintiff under MCL 500.3135(3)(a). We review de novo the trial court's ruling on the summary disposition motion.

Dancey v Travelers Prop Cas Co, 288 Mich App 1, 7; 792 NW2d 372 (2010). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We consider the pleadings and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Dancey*, 288 Mich App at 7.

Our Supreme Court explained the § 3135(3)(a) analysis in *American Alternative Ins Co, Inc v York*, 470 Mich 28; 679 NW2d 306 (2004). The central factual issue for analysis is whether the defendant intended to cause harm: “[I]n analyzing § 3135(3)(a), the courts are to review only whether the defendant intended to cause the harm that resulted.” *Id.* at 32. In keeping with these instructions, we must determine whether the record in this case indicates that defendant intentionally caused harm to plaintiff.

The record contains two reports relevant to this determination: the emergency room report and the police report. Both reports present statements in which plaintiff and his girlfriend declared that defendant deliberately struck plaintiff with her car. We need not decide whether the reports are admissible evidence, because plaintiff’s subsequent sworn deposition testimony neutralizes any questions of fact created by the reports. Plaintiff expressly testified in deposition that he did not know whether defendant intentionally struck him. Given plaintiff’s sworn deposition testimony, we conclude that his prior unsworn statements are insufficient to create a question of fact regarding defendant’s intent.

Plaintiff also argues that the trial court should have inferred defendant’s intent on the basis of defendant’s conduct. In support, plaintiff cites *People v Wardlaw*, 190 Mich App 318; 475 NW2d 387 (1991), which was a criminal case involving felonious assault. In *Wardlaw*, witnesses testified that the defendant drove a truck onto a lawn and aimed for the victim, and the Court found the evidence sufficient to affirm the defendant’s felonious assault conviction. *Id.* at 320. Here, in contrast, there was no testimony that defendant aimed her car at plaintiff. As such, the *Wardlaw* decision does not support plaintiff’s position.

On the basis of plaintiff’s deposition testimony, the trial court properly concluded that there was no evidence to support the contention that defendant intentionally caused harm to plaintiff. Accordingly, the trial court did not err in granting summary disposition in favor of defendant on plaintiff’s claim of tort liability under MCL 500.3135(3)(a).

Plaintiff next argues that genuine factual issues precluded summary disposition on the issue of whether the incident caused serious impairment of body function under MCL 500.3135(1). We disagree. Defendant presented medical records demonstrating that prior to the incident at issue, plaintiff had sustained two significant injuries that caused leg and back pain. The medical records indicated that plaintiff’s current condition was related to his previous injuries. Once defendant presented these records, plaintiff was required under MCR 2.116(G)(4) to present evidence to create a question of fact regarding whether defendant’s conduct caused plaintiff’s alleged serious impairment. See *Wilkinson v Lee*, 463 Mich 388, 395-398; 617 NW2d 305 (2000).

Plaintiff presented no admissible evidence to establish that his current condition resulted from the incident at issue. He offered deposition testimony from a physiatrist, but the physiatrist testified that she did not identify the source of plaintiff's injuries, and that she could not relate plaintiff's condition to any particular incident. Plaintiff contends that the trial court disregarded the evidence of his condition and that the court erroneously concluded plaintiff had no leg pain. This contention does not require reversal of the summary disposition. Although the trial court appears to have made a misstatement regarding plaintiff's leg pain, the court was definitive in its finding that plaintiff had not demonstrated a causal relationship between his condition and the incident at issue. Accordingly, the trial court properly concluded that plaintiff had failed to present sufficient evidence to create a question of fact as to whether the incident caused his alleged impairment.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell