STATE OF MICHIGAN

COURT OF APPEALS

THOMAS BILAN,

Plaintiff-Appellee,

v

MICHAEL MURCHIE and MONROE PUBLIC SCHOOL DISTRICT,

Defendants-Appellants.

UNPUBLISHED
June 13, 2013

No. 309345
Monroe Circuit Court
LC No. 11-030410-NI

Before: M. J. KELLY, P.J., and MURRAY and BOONSTRA, JJ.

BOONSTRA, J. (*concurring*).

I concur in the majority opinion. I write separately only to stress the closeness of this case in light of the paucity of record evidence as to whether plaintiff's claimed injuries "resulted from" the incident between plaintiff's tricycle and the pickup truck owned by defendant school district.

The record reflects that plaintiff had open heart triple bypass surgery less than 5 months prior to the incident in question. The record further reflects that when the incident occurred, plaintiff was knocked off his tricycle seat but did not fall. The police were not called. Plaintiff reported to the driver of the pickup truck that he would be okay, later testifying that he assumed that his chest was hurting from the bypass surgery. The tricycle was not seriously damaged, and plaintiff rode the tricycle approximately 2 or 2.5 miles home after the incident. Plaintiff filed a police report a week later. Plaintiff testified that he did so because his "chest began hurting more and more." His reported symptoms at that time were of pain in the middle of his back.

Not until eight months after the incident did plaintiff report "clicking" in his chest. The resulting medical records, including those from Dr. Christopher J. Riordan, reflect that plaintiff was involved in "a number of auto accidents or ATV accidents" since his bypass surgery, and that plaintiff noticed the clicking "[d]ue to these" incidents.[1] Although such a "history" typically is taken from a patient and then recorded in his or her medical records, discovery in this case did

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[1] Defendants also maintain that plaintiff injured his chest by the exertions of a number of other post-bypass activities.

not address the genesis or accuracy of plaintiff's history as reported in the medical records. Plaintiff now denies such incidents other than the incident in question. Initially believing the "clicking" to be caused by inadequate post-bypass healing of the xiphoid to the tip of the sternum, medical personnel resected the xiphoid.

Notwithstanding that surgery, plaintiff reported continued "clicking," and on examination 11 months after the incident, medical personnel were "finally able to feel a click." Dr. Riordan further reported in an October 4, 2010 letter regarding that examination that plaintiff noticed the clicking "[a]fter an auto accident," and that "I think that in retrospect he actually disarticulated the cartilaginous insertion of his costal margin at the time of his accident." A subsequent letter from Dr. Riordan dated January 10, 2011 refers to plaintiff noticing the "clicking" after he was in a "truck accident." There is no explanation in the record for the discrepancy between Dr. Riordan's later references to "an auto accident" and a "truck accident," and the earlier references (including those from Dr. Riordan) to "a number of auto accidents or ATV accidents." And there is little from which to determine whether the later characterizations by Dr. Riordan reflected a medical opinion as to the cause of plaintiff's complaints (e.g., as resulting from this particular incident), or whether they simply reflected further recitations of medical history as stated to Dr. Riordan by plaintiff himself. Apparently, Dr. Riordan was not deposed.

All of this leaves me with the sense that the record evidence of the cause of the "clicking" reported by plaintiff is extremely thin. That being said, however, I am compelled to agree with the majority that plaintiff indeed presented a quantum of evidence supporting the proposition that the "clicking" resulted from the incident in question, and that defendant school district offered little more than inferences from seemingly inconsistent medical record patient histories to counter plaintiff's evidence. I therefore agree, based on the paucity of record evidence, and viewing the available evidence in the light most favorable to plaintiff as the non-moving party, *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012), that plaintiff sufficiently met his burden to establish a genuine issue of material fact, i.e., that reasonable minds could differ as to whether his injuries "resulted from" the incident in question, and that summary disposition thus was properly denied to the defendant school district. *Allison v AEW Capital Mgt*, *LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

/s/ Mark T. Boonstra