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STATE OF MICHIGAN

COURT OF APPEALS

DAVID RODRIGUEZ,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
January 26, 2023

No. 359067
Wayne Circuit Court
LC No. 19-002449-NF

Before: CAVANAGH, P.J., and O'BRIEN and RICK, JJ.

PER CURIAM.

Plaintiff, David Rodriguez, appeals as of right the order granting summary disposition under MCR 2.116(C)(10) in favor of defendant, Farmers Insurance Exchange, in this action involving no-fault personal protection insurance (PIP) benefits. We affirm.

I. BACKGROUND

On June 30, 2018, plaintiff was a pedestrian who suffered injuries after being struck by a motor vehicle. The driver of the motor vehicle was never identified. Plaintiff, through his attorney, applied for no-fault PIP benefits through the Michigan Assigned Claims Plan (MACP), which is operated by the Michigan Automobile Insurance Placement Facility (MAIPF). The MACP assigned plaintiff's claim to defendant.[1]

In the application for PIP benefits through the MACP, which was prepared by a paralegal at plaintiff's attorney's firm, plaintiff alleged that he suffered injuries in the accident, including a broken neck, a laceration to his head, a laceration to his ankle, and a shattered nose. In response to the question, "Before this accident happened, did you have any of the same injuries as you listed," plaintiff answered, "(2004 or so & 2015 auto) spine injury & head." In response to the request to "list any medical conditions you had and/or medications you were taking at any time

[1] The MACP assigns no-fault insurance claims made by individuals without an available source of no-fault insurance benefit to participating insurers. See MCL 500.3172(1).

before this accident," plaintiff answered that he "had spine surgery & head surgery prior." Plaintiff also disclosed that he was taking aspirin and "diabetic pill." Plaintiff did not disclose any other medical conditions that he had or any other medications that he was taking at any time before the accident.

Defendant moved for summary disposition under MCR 2.116(C)(10). Defendant argued that plaintiff made materially false statements in his application regarding his medical history, including his involvement in several accidents prior to the June 30, 2018 accident and his preexisting conditions. Defendant contended, therefore, that plaintiff was ineligible for no-fault insurance benefits under MCL 500.3173(a)(2).[2] Defendant also asserted that plaintiff misrepresented the severity of his alleged injuries and his condition since the accident by claiming that his injuries affected his ability to work, lift, drive and engage in routine activities.

Plaintiff opposed the motion, arguing that a question of fact existed with respect to whether plaintiff knowingly made a false representation by failing to disclose his entire medical and accident history. Plaintiff also argued that an issue of fact existed regarding whether plaintiff knew that the application contained false information because plaintiff did not sign the application but, rather, signed only the authorization for release of information. Additionally, plaintiff argued that the trial court should not consider the evidence relied upon by defendant in support of its claim that plaintiff misrepresented the severity of his injuries because evidence had not been properly authenticated. Relatedly, plaintiff filed a signed affidavit asserting that his twin brother, Edwin Rodriguez, was the individual depicted in some of the videos submitted by defendant and that some of the photographs submitted by defendant were taken before plaintiff's accident. In response to the affidavit, defendant produced evidence that Edwin was four years older than plaintiff.

The parties' arguments at the motion hearing mirrored their written arguments. The court found that defendant "has presented evidence that the plaintiff has knowingly presented statements that . . . contained false information that are material to the claim and come under the fraudulent insurance act." The court rejected plaintiff's "defense of somebody helped him fill out the application, the plaintiff would be responsible. He signed it." The court additionally found that there was no genuine issue of fact that plaintiff made a false statement in his affidavit in response to defendant's motion for summary disposition when he stated that the person depicted in the photographs and videos submitted by defendant was his twin brother. The court granted

[2] The statute was amended by 2019 PA 21, effective June 11, 2019. The 2019 amendment to the no-fault act, MCL 500.3101 *et seq*., is not retroactive. See *Bakeman v Citizens Ins Co of the Midwest*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 357195); slip op at 3 n 2, citing *Andary by & through Andary v USAA Cas Ins Co*, ___Mich App ___, ___; ___NW2d ___ (2022) (Docket No. 356487), lv gtd ___ Mich ___ (2022). This provision is now located at MCL 500.3173a(4), and it has only been changed in ways that are not relevant to this appeal. Because the former version of the no-fault act applies in this case, we utilize the former version of the statute in this opinion.

defendant's motion for summary disposition "for the reasons stated by the defense counsel and the Court on the record."

II. STANDARD OF REVIEW

This Court "review[s] de novo the interpretation and application of a statute as a question of law. If the language of a statute is clear, no further analysis is necessary or allowed." *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). A trial court's determination on a motion for summary disposition is reviewed de novo. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the nonmoving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A genuine issue of material fact exists when the record presents an issue of fact over which reasonable minds may differ. *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018) (quotation omitted).

III. ANALYSIS

Plaintiff argues that the trial court erred by making credibility determinations regarding the photographs and videos submitted by defendant and by improperly weighing the statements made by plaintiff in his affidavit when deciding defendant's motion for summary disposition. However, we find that the trial court properly found that there was no genuine issue that plaintiff committed a fraudulent insurance act under MCL 500.3173a(2) when he knowingly made false statements in his application for benefits with respect to his medical history and preexisting conditions and that plaintiff was not entitled to PIP benefits.

Entitlement to benefits through MAIPF is governed by MCL 500.3173a. At the time of the accident, MCL 500.3173a(2) provided:

> (2) A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under [MCL 500.403] that is subject to the penalties imposed under [MCL 500.4511]. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment of [PIP] benefits under the assigned claims plan.

"[I]n order to qualify as part of a fraudulent act under [MCL 500.3173a(2)], the false statement merely must have been presented as part of or in support of a claim to the [MACP] for payment or another benefit." *Candler v Farm Bureau Mut Ins Co of Mich*, 321 Mich App 772, 779-780; 910 NW2d 666 (2017). The *Candler* Court explained that a person commits a fraudulent insurance act when:

> (1) the person presents or causes to be presented an oral or written statement, (2) the statement is part of or in support of a claim for no-fault benefits,[3] and (3) the claim for benefits was submitted to the MAIPF. Further, (4) the person must have known that the statement contained false information, and (5) the statement concerned a fact or thing material to the claim. [*Id*. (footnote omitted).]

"The statute unambiguously establishes that the only scienter requirement is mere knowledge 'that the statement contains false information concerning a fact or thing material to the claim.' Although the word 'fraudulent' might have other connotations in other contexts, where a statute provides its own definition of a word, the statute's definition alone must be applied." *Bakeman v Citizens Ins Co of the Midwest*, ___ Mich App ___; ___ NW2d ___ (2022); (Docket No. 357195); slip op at 4 (citations omitted). The critical question here is whether plaintiff knew that the application contained false information concerning a fact or thing material to the claim.

In his application for no-fault benefits, plaintiff indicated that he injured his neck, head, ankle, and nose in the accident. Plaintiff indicated that he had prior injuries in 2004 and in 2015 to his spine and his head for which he had surgery. He indicated that his medication history included aspirin and diabetes medication. Plaintiff's medical records establish that plaintiff omitted many significant facts from his application for benefits. For example, plaintiff was struck by a motor vehicle while riding a bicycle in 2001, resulting in injuries to his back. On February 10, 2004, plaintiff had a workplace slip and fall accident and thereafter had his first spinal surgery. In June 2005, plaintiff fell from a ladder and tore his medial meniscus. On March 7, 2007, plaintiff was involved in a motor vehicle accident and complained of neck pain. In May 2008, plaintiff had a slip and fall accident outside his house, resulting in a hairline fracture on an unidentified bone. On January 28, 2011, plaintiff had a slip and fall accident and complained of neck pain. On July 18, 2011, plaintiff was involved in a motorcycle accident and complained of pain in his neck, left shoulder, and left ankle. In 2014, plaintiff had a stroke. On March 30, 2016, plaintiff suffered a broken clavicle and shoulder. In 2016, plaintiff was involved in a motor vehicle accident, resulting in two herniated discs in his neck. On May 20, 2017, plaintiff went to the emergency room with a complaint of neck pain. On July 17, 2017, plaintiff was involved in a motor vehicle accident, resulting in a closed head injury. Plaintiff's medical records also revealed that plaintiff's medication history included significant pain medication, including Flexeril, Percocet, and Norco. A review of the above extensive omissions leaves no question that plaintiff was dishonest in his application for no-fault benefits. A reasonable juror could not conclude that the plaintiff was unaware that he was submitting false information.[4]

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[3] The statute does not require the false statement to be submitted to any particular person or entity so long as it supports a claim to the MAIPF. *Candler*, 321 Mich App at 780.

[4]. Plaintiff implies, without citation to authority and without development of the argument, that there was a genuine issue of material fact with respect to whether plaintiff had knowledge that the application contained false information because a paralegal prepared the application. "It is axiomatic that where a party fails to brief the merits of an allegation of error . . . [or] where a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Prince*

Further, the false statements were material to plaintiff's claim. "A statement is material if it is reasonably relevant to the insurer's investigation of a claim." *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 425; 864 NW2d 609 (2014), abrogated on other grounds by *Williams v Farm Bureau Mut Ins Co of Mich*, 335 Mich App 574; 967 NW2d 869 (2021). Under MCL 500.3107(1)(a), no-fault coverage is limited to "reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." No-fault benefits are only available "to the extent that the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident." *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 531; 697 NW2d 895 (2005). Even if a claimant can prove that an accident exacerbated or aggravated a preexisting condition, the fact of a preexisting condition is still highly relevant to the issue of causation and, thus, material to the claim and the task of determining eligibility for benefits.

Accordingly, we conclude that the trial court properly determined that there was no genuine issue of material fact regarding plaintiff's commission of a fraudulent insurance act and that plaintiff was ineligible for benefits under MCL 500.3173a(2).[5]

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Colleen A. O'Brien
/s/ Michelle M. Rick

v MacDonald, 237 Mich App 186, 197; 602 NW2d 834 (1999). Nevertheless, plaintiff did not specifically assert below that he did not have knowledge of the content of the information provided in the application. Rather, he asserted in his brief in response to defendant's motion for summary disposition and at the hearing on the motion that an "unintentional omission" is different from an "intentional misrepresentation," and that he did not sign the application.

[5] Because we conclude that plaintiff committed a fraudulent insurance act under MCL 500.3172a(2) when he provided false information regarding his medical history in the application for no-fault benefits through the MACP, we need not address plaintiff's argument that the trial court erred by additionally finding that plaintiff made false statements in his affidavit that was submitted during discovery. See *Williamson v AAA of Mich*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 357070); slip op at 8 (holding that "the fraudulent insurance act provision in MCL 500.3173a does not apply to statements made after litigation has ensued).