

STATE OF MICHIGAN
COURT OF APPEALS

FELICIA EDISON,

Plaintiff-Appellant,

v

ALLIED GENERAL INSURANCE COMPANY OF
AMERICA and NATIONWIDE GENERAL
INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED

June 15, 2023

No. 361090

Wayne Circuit Court

LC No. 20-008214-NF

Before: REDFORD, P.J., and O'BRIEN and FEENEY, JJ.

PER CURIAM.

In this first-party no-fault action, plaintiff appeals by leave granted¹ the order granting partial summary disposition to defendant Nationwide General Insurance Company² under MCR 2.116(C)(10). The order dismissed plaintiff's claims for work-loss and replacement services. For the reasons explained in this opinion, we reverse and remand for further proceedings.

I. BACKGROUND

This case arises out of a July 2, 2019 accident. A vehicle rear-ended plaintiff's vehicle, insured by Nationwide, setting off a chain of rear-end collisions. While plaintiff did not receive medical treatment at the scene, later that day, she sought medical care at an emergency room “complaining of headache, neck pain, swelling and bruising to her left chest wall/breast,” and

¹ *Edison v Allied Gen Ins Co of America*, unpublished order of the Court of Appeals, entered September 6, 2022 (Docket No. 361090).

² While defendants responded jointly to the complaint and had the same attorney, only Nationwide moved for summary disposition. Thus, the trial court granted partial summary disposition to Nationwide, without reference to defendant Allied General Insurance Company of America.

“bilateral knee pain . . . and nausea.” Plaintiff was diagnosed with internal injuries to her chest, abdomen, and pelvis.

At the time of the accident, plaintiff worked in the Wayne County Clerk’s office as a department supervisor, and had her own real estate management company, F&Q Investment, LLC, through which she rented and managed properties. Plaintiff testified that she returned to work in the weeks immediately after the accident, despite a disability certificate indicating that she was disabled from employment and household work.³ Plaintiff stated that, during this period, she was in pain and took some days off.

In August 2019, plaintiff was diagnosed with atrial fibrillation and palpitation. Her condition resulted in a three-day hospitalization starting on August 24, 2019. This hospital stay kicked off the first time that plaintiff took an extended leave of absence from her job at the Wayne County Clerk’s office since the automobile accident.

Plaintiff began claiming work-loss benefits from both her jobs on August 26, 2019. Plaintiff claimed work loss from F&Q because, due to her “physical limitations” after the accident, she was unable to rent the F&Q-owned properties or manage properties for others. Dr. Ross Nochimson, D.O., completed disability certificates in August and September 2019 indicating that plaintiff was disabled from employment, disabled from household work, required transportation for the month following the respective date of the certificate, and needed attendant services.

During the course of this litigation, plaintiff was asked about what caused her to stop working, and she testified, “The atrial fibrillation started everything to kind of spiral downwards.” The following exchange also took place:

Q. So then after that month and a half period of time what happened to make it so that you decided or the doctor decided to take you fully off of work?

A. I was hospitalized for approximately a week for atrial fibrillation.

In September 2019, Dr. Nochimson completed Family Medical Leave Act (FMLA) paperwork for plaintiff’s disabling medical condition, which he noted commenced on the date of the accident. This paperwork listed the conditions causing disability as “multiple disc herniations cervical,” “lumbar spine,” and “complex tears in the meniscus, left knee.” The paperwork also

³ Two disability certificates dated July 13, 2019, are included in the lower court file. Both certificates indicate that plaintiff was diagnosed with knee pain, neck pain, and lower back pain. One certificate, which omits plaintiff’s date of birth, the date of the accident, and plaintiff’s claim number, indicates that plaintiff was disabled from household work from July 13, 2019, to August 12, 2019, and required transportation for an unspecified period. The other certificate, which is completely filled out, indicates that plaintiff was disabled from employment, disabled from household work, required transportation, and needed attendant care services from July 13, 2019, to August 13, 2019.

indicated that plaintiff was unable to perform the job functions of “sitting,” “lifting . . . > 15 lbs,” and “computer work.”

Through October 2020, plaintiff was hospitalized or had emergency room visits at least three more times because of her atrial fibrillation. Plaintiff’s cardiologist “ruled out [her atrial fibrillation] as related to the accident.”

Nationwide paid household-replacement-services benefits to plaintiff through July 20, 2020, and work-loss benefits to plaintiff through October 7, 2020. After defendants stopped paying plaintiff personal injury protection (PIP) benefits, plaintiff brought this action seeking medical expenses, lost wages, replacement services, and attendant care under the no-fault act, MCL 500.3101 *et seq.*

Dr. Ali Sabbagh performed an independent medical evaluation (IME) of plaintiff on behalf of defendants. Dr. Sabbagh diagnosed plaintiff with traumatic knee pain and meniscal tear, which she believed were related to the accident. Dr. Sabbagh concluded that plaintiff should be restricted from some potential work activities, including “heavy lifting above 20-30 pounds or [a] significant amount of walking (more than 1000-2000 steps) secondary to her knee pain.”

After this litigation commenced, plaintiff was released to go back to her job at the Wayne County Clerk’s office, and the last day for which plaintiff has claimed work-loss benefits for that job is January 17, 2021. Plaintiff was not cleared to return to her second job at F&Q at that time.

In March 2021, plaintiff underwent a cardiac ablation as treatment for her atrial fibrillation. Afterwards, however, plaintiff was still not cleared to return to her work at F&Q, and continued to claim work-loss benefits for that job and replacement-services benefits. A disability certificate signed in September 2021 indicates that plaintiff was still disabled from work at that time due to knee pain, neck pain, and lower back pain, and required replacement services and transportation for the month following the date of the certificate.

Nationwide eventually moved for partial summary disposition under MCR 2.116(C)(10) regarding plaintiff’s work-loss and replacement-services claims. Nationwide argued that any opportunity for plaintiff to claim work-loss and replacement-services benefits because of her injuries from the accident ended when she was independently disabled by her atrial fibrillation diagnosis in late August 2019. Nationwide cited *MacDonald v State Farm Mut Ins Co*, 419 Mich 146; 350 NW2d 233 (1984), to support its argument that a superseding disability (plaintiff’s atrial fibrillation) extinguished her eligibility for PIP benefits because, at the onset of her atrial fibrillation, plaintiff would have lost wages and required replacement services regardless of the injuries she sustained in the July 2019 accident. Nationwide alternatively contended that, before the onset of atrial fibrillation, plaintiff had not been disabled because she continued to work, and her deposition testimony established that she was not disabled until the onset of atrial fibrillation.

In response, plaintiff argued that *MacDonald* was distinguishable because, there, the parties stipulated that the plaintiff’s superseding condition was independently disabling, which remained an open question in this case. According to plaintiff, this case was more analogous to *Morales v State Farm Mut Auto Ins Co*, 279 Mich App 720, 740; 761 NW2d 454 (2008), because, like in *Morales*, the parties here disagreed about the “but for” cause of plaintiff’s disability—

whether it was caused by the injuries she sustained in the July 2019 accident or her subsequent atrial fibrillation. Plaintiff also argued that temporary interruptions of her accident-related disability—i.e., time periods in which plaintiff’s inability to work was because of atrial fibrillation—would not preclude her entire claim for her accident-related injuries. Rather, benefits would be suspended only for those periods of temporary interruption. With respect to Nationwide’s alternative argument that plaintiff was not disabled before the onset of atrial fibrillation, plaintiff contended that she produced documentary evidence rebutting Nationwide’s assertion.

In its opinion and order granting partial summary disposition, the trial court seemed to conclude that, while plaintiff was issued a disability certificate immediately following the accident, that certificate “was devoid of any indication of the reason for the disability,” and “[t]he first indication of a longer-term disability” was when plaintiff was hospitalized for atrial fibrillation in August 2019. With this understanding of the evidence, the trial court seemingly believed that the atrial fibrillation was the cause of plaintiff’s disability, such that plaintiff needed to establish that the atrial fibrillation was caused by the accident in order to receive PIP benefits. The trial court concluded:

The record in this case does not include any clear medical testimony that the Disability Certificate was for heart-related, and not for knee injury or bruising, reasons. Post-accident atrial fibrillation may indeed be a disabling factor, but without sufficient medical evidence that this too was caused by the automobile accident at issue (triggering, aggravation), it is the kind of superseding event highlighted by the *MacDonald* case. Without some factual basis of causation connecting the atrial fibrillation to the automobile accident, Plaintiff’s claims do not suffice to indicate a genuine issue of material fact.

This appeal followed.

II. STANDARD OF REVIEW

We review de novo a trial court’s decision on a motion for summary disposition. *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004). Nationwide moved for partial summary disposition under MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition under MCR 2.116(C)(10) is warranted when “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” In considering a motion for summary disposition under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party, MCR 2.116(G)(5); *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 206; 815 NW2d 412 (2012), and must draw all reasonable inferences in favor of the nonmoving party, *Dextrom v Wexford County*, 287 Mich App 406, 415-416; 789 NW2d 211 (2010).

The moving party has the initial burden to identify “the issues as to which the moving party believes there is no genuine issue as to any material fact.” MCR 2.116(G)(4). See also *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 8-9; 890 NW2d 344 (2016). If the moving party properly asserts

and supports their motion for summary disposition, the “burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists,” and they cannot do this by relying on mere allegations or denials in their pleadings. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). See also *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

III. ANALYSIS

MCL500.3107(1) states, in pertinent part:

Subject to the exceptions and limitations in this chapter . . . personal protection insurance benefits are payable for the following:

* * *

(b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured. . . .

(c) Expenses not exceeding \$20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent. [MCL 500.3107(1)(b) and (c).]

The central question on appeal is whether the onset of plaintiff’s atrial fibrillation was an independent superseding disability that extinguished plaintiff’s eligibility for PIP benefits. The effect of an independent superseding disability on the continuation of PIP benefit eligibility was the focus of our Supreme Court’s opinion in *MacDonald*. In that case, the parties stipulated that (1) the plaintiff was injured in a single-car accident in November 1976, which caused injuries to his neck and shoulders, and disabled him from work for 28 months, and (2) the plaintiff suffered an unrelated heart attack two weeks after the accident, resulting in a total disability from work, which continued into at least June 1984, when the case was decided by our Supreme Court. *MacDonald*, 419 Mich at 150. The plaintiff further stipulated that “[e]ither occurrence acting independently of the other would give [the] plaintiff a work-loss disability.” *Id.*

After examining the applicable no-fault provisions, our Supreme Court held that work-loss benefits only compensate an injured person for income he or she “would have received but for the accident,” and because the plaintiff would not have worked following his heart attack (regardless of the accident), he was ineligible for work-loss benefits after the date of his heart attack. *Id.* at 152. Our Supreme Court clarified that a superseding injury must act “independently of the other [to] give plaintiff a work-loss disability.” *Id.* at 150.

After *MacDonald* was decided, this Court addressed a similar issue in *Morales*. In that case, the plaintiff was diagnosed with a closed head injury after a motor vehicle accident, but already had significant preexisting health issues. *Morales*, 279 Mich App at 724. The insurer

contended that it was not liable for PIP benefits because the plaintiff's disability stemmed from certain preexisting conditions that became disabling following (but not as a result of) the accident. *Id.* at 739. The matter went to a jury, which was given an instruction indicating a "but for" standard, and the jury found work-loss benefits were payable. On appeal, this Court found no reason to set aside the verdict, concluding that the effect of any unrelated condition on plaintiff's eligibility for PIP benefits was a factual question for the jury. *Id.* at 739-740. This Court explained that, under *MacDonald*,

a supervening cause may apply to preclude work-loss benefits if the claimant would not have been able to work even if no auto accident had occurred. Stated otherwise, there is a "but for" factual issue like proximate causation; if, but for the accident, plaintiff would have been able to work, work-loss benefits are payable. On the other hand, even if no accident had occurred but plaintiff would not have been able to work, no work-loss benefits would be payable. [*Id.* at 739.]

Here, Nationwide contends that plaintiff's atrial fibrillation condition was completely disabling, terminating any eligibility for PIP disability benefits resulting from plaintiff's accident injuries. However, the record is far from conclusive in establishing this contention. Though plaintiff returned to work in the period between the accident and the onset of her atrial fibrillation, she has testified that she was in pain at work during this period and took some days off. Plaintiff has also stated that her physical limitations, specifically her inability to lift and use stairs, prevented her from managing the rental properties associated with F&Q.

Though the sequence of events and some additional testimony by plaintiff suggest that atrial fibrillation independently established plaintiff's disability, the record contains medical documentation which refutes this, including: (1) several disability certificates indicating disability from work and household chores as early as mid-July 2019, based specifically on the diagnoses of knee pain, neck pain, and lower back pain, with no mention of atrial fibrillation; (2) FMLA paperwork completed after the onset of atrial fibrillation, documenting plaintiff's disability from work activities caused by plaintiff's neck, back, and knee injuries, and not listing atrial fibrillation as a cause; and (3) the IME paperwork indicating lifting and walking restrictions because of plaintiff's knee pain, but not mentioning any disability from her atrial fibrillation. Though plaintiff cannot establish a disability until she was actually unable to work, *MacDonald*, 419 Mich at 152, considering the evidence in the light most favorable to plaintiff, a question of fact remains whether there were periods of disability caused by the accident injuries alone, even after the onset of plaintiff's atrial fibrillation condition, and whether the atrial fibrillation was an independent or unrelated occurrence causing a superseding disability under *MacDonald*.

As highlighted by plaintiff on appeal, it seems that the trial court's review of the documentary evidence submitted by the parties was incomplete. For instance, the trial court's statement that plaintiff's initial disability certificate "was devoid of any indication of the reason for the disability (e.g., knee, chest bruising, etc.)" ignores that the diagnostic codes on that

certificate listed the reasons for plaintiff's disability as knee pain, neck pain, and lower back pain.⁴ The more fundamental error in the trial court's opinion, however, is its conclusion that plaintiff's disability was caused by the atrial fibrillation, such that plaintiff had to produce evidence showing that the atrial fibrillation was caused by the accident in order to receive PIP benefits. As explained, while there is evidence in the record to support this conclusion, plaintiff has produced numerous medical records showing that plaintiff's disability is attributable to her neck, back, and knee injuries, not atrial fibrillation. When all of the evidence is viewed in the light most favorable to plaintiff, a question of fact remains as to the cause of plaintiff's disability.

Plaintiff further argues that the fact that her atrial fibrillation temporarily disabled her does not necessarily preclude her eligibility for PIP. We agree. Our Supreme Court addressed the temporary effects of some superseding events in *Marquis v Hartford Accident & Indemnity*, 444 Mich 638; 513 NW2d 799 (1994). Notably, the Michigan Supreme Court recognized in its legal analysis that some superseding causes only suspend eligibility for work-loss benefits; one example recognized in previous caselaw being incarceration. *Id.* at 649. Here, there are no medical records indicating that atrial fibrillation was permanently disabling by itself, or even disabling for periods of time beyond the specific occurrences and hospitalizations which resulted from the condition. Medical records show that plaintiff was: (1) hospitalized for the condition for three days in August 2019; (2) had to visit the hospital again in December 2019, for an allergic reaction to the loop recorder implanted to monitor the fibrillation; (3) had another atrial fibrillation episode in February 2020 for which she was admitted to the hospital; (4) had two emergency room visits for the condition between February 2020 and October 2020; and (5) underwent cardiac ablation in March 2021. Though this is evidence that plaintiff suffered from a serious medical condition during this period, plaintiff's medical records do not contain any statements regarding any activity restrictions or other disability caused by her atrial fibrillation. Even the IME did not result in any finding of disability from plaintiff's atrial fibrillation; it found that plaintiff's lifting and walking restrictions were because of plaintiff's knee pain. Thus, there is support in the record for plaintiff's contention that her atrial fibrillation was episodic in nature, lending itself to the framework of a potential temporary interruption for no-fault benefit eligibility, and not the complete termination of this eligibility.

Reversed and remanded. We do not retain jurisdiction.

/s/ James Robert Redford
/s/ Colleen A. O'Brien
/s/ Kathleen A. Feeney

⁴ Also, in a footnote, the trial court stated that this "certificate did not include facts for work disability," but there were two separate disability certificates dated July 13, 2019. While one did not list disability from employment, the other did.