

STATE OF MICHIGAN
COURT OF APPEALS

ANNE SCHENCK,

Plaintiff-Appellant,

v

ALIA ASMAR and STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED

July 1, 2014

No. 315053

Macomb Circuit Court

LC No. 11-002380-NI

Before: SAWYER, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

In this action for payment of underinsured motorist coverage, plaintiff appeals as of right the trial court's judgment, following the jury trial, in her favor in the amount of \$10,000. We affirm.

Plaintiff had a \$100,000 underinsured motorist policy with defendant State Farm. Plaintiff was injured when her vehicle was struck by a vehicle driven by defendant Alia Asmar while traveling at a high rate of speed on I-696. Plaintiff suffered a fracture of her back. Before the accident, plaintiff was described as energetic, lively, and an avid soccer player. She also worked for Google in Ann Arbor. After the accident, plaintiff was described as sad and depressed, unable to walk, and unable to work. Plaintiff collected wage loss benefits from State Farm under the no-fault policy in the amount of \$86,446.95. Plaintiff also collected \$71,150.79 in disability benefits through Prudential. However, in contrast to plaintiff's claims that she was unable to drive to and sit at work because of pain, there was evidence that plaintiff travelled extensively, including trips to Europe and Alaska, and her physical injury was resolved within six months of the accident. Consequently, the defense questioned whether plaintiff claimed an extensive disability because the payment of benefits exceeded her income.

Asmar admitted responsibility for the accident, but she was only insured up to \$25,000 for noneconomic damages, which the no-fault insurer paid, and Asmar was dismissed from the case. Through plaintiff's underinsured motorist policy, State Farm agreed to pay noneconomic damages up to \$100,000 that Asmar would have been responsible for. Therefore, at trial, the issues involved whether plaintiff suffered a threshold injury pursuant to MCL 500.3135(1) to collect on the underinsured motorist policy, or more specifically, a serious impairment of body function.

Before trial, plaintiff moved the trial court to hold that evidence of the payments of Prudential and State Farm was not admissible before the jury under the collateral source rule. State Farm essentially argued that the evidence was admissible to prove that plaintiff malingered in returning to work. The trial court agreed with State Farm and allowed the evidence, but only to prove that plaintiff malingered in returning to work. After trial, the jury found for the plaintiff in the amount of \$10,000.

On appeal, plaintiff argues that the trial court abused its discretion in admitting the aforementioned evidence. We disagree. “We review a trial court’s decision to admit or exclude evidence for an abuse of discretion.” *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). A court necessarily abuses its discretion when it admits evidence that is inadmissible as a matter of law. *Id.* Reversal on the basis of the erroneous admission of evidence is unwarranted unless a substantial right of a party is affected, and it affirmatively appears that the failure to grant relief is inconsistent with substantial justice. *Id.* An abuse of discretion occurs when the trial court’s decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). “The collateral source rule bars evidence of other insurance coverage when introduced for the purpose of mitigating damages.” *Nasser v Auto Club Ins Ass’n*, 435 Mich 33, 58; 457 NW2d 637 (1990). Evidence regarding collateral sources and their effect on an individual’s motivation to return to work is admissible in the trial court’s discretion. *Richards v Pierce*, 162 Mich App 308, 318-319; 412 NW2d 725 (1987). The trial court has the discretion to “admit evidence bearing on the question of whether an injured party possessed sufficient incentive to return to work.” *Blacha v Gagnon*, 47 Mich App 168, 174-175; 209 NW2d 292 (1973). Consequently, evidence may be admitted that absence from work was not solely attributed to the injuries received, but because plaintiff had accumulated sick leave. *Id.* at 175. Pursuant to *Nasser*, evidence of other insurance coverage is barred by the collateral source rule only where it is being offered to mitigate damages. *Nasser*, 435 Mich at 58. Therefore, if the evidence was admissible for a separate purpose, the trial court properly exercised its discretion in admitting it. *Id.* at 58-59. If the evidence is relevant and offered for a proper purpose, the evidence nonetheless should be excluded if more prejudicial than probative under MRE 403. *Id.* at 59-60.

The present case involves an underinsured motorist claim by plaintiff against State Farm. Such a policy allows an individual to collect from their own insurance carrier in the amount that would be permitted in a suit against the at-fault driver. See *Rory v Continental Ins Co*, 473 Mich 457, 465-466; 703 NW2d 23 (2005). Under the no-fault act, the at-fault driver is liable for noneconomic loss when “the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). The issue in the present case is whether there was a serious impairment of body function. The no-fault act provides that “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.’” *McCormick v Carrier*, 487 Mich 180, 194-195; 795 NW2d 517 (2010). “Determining the effect or influence that the impairment has had on a plaintiff’s ability to lead a normal life necessarily requires a comparison of the plaintiff’s life before and after the incident.” *Id.* at 202.

Plaintiff presented evidence that she worked full time at Google and led an athletic, active lifestyle before the accident. However, she testified that her condition following the accident prevented her from working and engaging in her pre-accident activities to establish a

serious impairment of body function. To rebut this evidence, State Farm offered proof that plaintiff was able to return work, evidenced by her multitude of vacations after the accident, including a cruise around Europe and a sailing trip in Alaska. Further, evidence provided by plaintiff's doctor suggested that plaintiff's spine was healed after approximately six months, but she continued to receive disability benefits for 17 months after the accident, when she lost her job at Google, and wage loss benefits from State Farm. In sum, the evidence of the payments provided motive for plaintiff to avoid returning to work — traveling at will while continuing to collect approximately double her salary. *Blacha*, 47 Mich App 175. The evidence was undoubtedly relevant under MRE 401, and admissible under MRE 403. See *Nasser*, 435 Mich 58-60. While there was some danger the jury would assume the money received from State Farm and Prudential was enough to compensate plaintiff for her losses, that outcome was protected against by the trial court's ruling and State Farm's conduct limiting evidence of the payments only to issues regarding serious impairment of body function.

Therefore, because the evidence was admissible to prove whether plaintiff suffered a serious impairment of body function, and not to mitigate damages, the collateral source rule did not apply. *Nasser*, 435 Mich at 58. As such, the trial court properly exercised its discretion in admitting the evidence. *Id.*

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood