

STATE OF MICHIGAN
COURT OF APPEALS

KELLY ABBOTT,

Plaintiff-Appellant,

v

STATE OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

December 28, 2001

No. 225729

Court of Claims

LC No. 98-017155-CM

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

This is an automobile negligence action brought under the vehicle exception to the governmental immunity act, MCL 691.1405. Plaintiff appeals as of right from an order granting summary disposition for defendant under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In November 1996, plaintiff's automobile collided with a car owned by defendant and driven by a state employee. Plaintiff's right knee was cut by her car keys, requiring four stitches. Emergency room records indicated that she was able to flex and move her knee and had no instability. In August 1997, Abbas Zand, M. D., performed an arthroscopy and did a partial meniscectomy upon discovering a discoid lateral meniscus. Zand explained, however, that the discoid meniscus was "not secondary to the trauma, but is a congenital malformation." The following November, plaintiff's knee buckled as she was walking down a flight of stairs, causing her to fall down two steps and strike the knee. She underwent a second arthroscopy in January 1998 that revealed a chondral fracture of medial femoral condyle. In July 1998, orthopedic surgeon David Detrisac, M. D., examined the joint and found no instability of the ligaments or patella or other abnormalities. He indicated that the likely problem was muscular weakness.

The threshold requirements for pursuing a tort remedy for noneconomic damages under the no-fault act apply when the defendant is a governmental agency being sued under the vehicle exception to governmental immunity. *Hardy v Oakland Co*, 461 Mich 561, 562; 607 NW2d 718 (2000). Defendant moved for summary disposition, arguing that even if plaintiff could show that her knee problem was caused by the accident, she failed to establish that she suffered a serious impairment of body function as required under MCL 500.3135(1). The trial court ruled that

* Circuit judge, sitting on the Court of Appeals by assignment.

summary disposition was appropriate because plaintiff failed to establish a causal connection between the automobile accident and the condition of her knee.

Plaintiff contends that the trial court erred in concluding that she failed to establish that her knee pain was caused by the accident. This Court's review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In deciding a motion brought under MCR 2.116(C)(10), the trial court considers the documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). However, if the opposing party fails to come forward with some evidentiary support for her claim, summary disposition is proper. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

Proof of causation requires both cause in fact and legal, or proximate, cause. *Haliw v Sterling Heights*, 464 Mich 297, 310; 613 NW2d 727 (2001). Cause in fact requires that the harmful result would not have come about but for the defendant's negligent conduct. *Id.* Plaintiffs may show causation circumstantially, but to be adequate, the proofs must facilitate reasonable inferences rather than mere speculation. *Skinner, supra* at 163-164. If there is no genuine issue of material fact, the question of causation can be decided by the court. See *id.* at 163.

Here, plaintiff's emergency room records noted no knee damage after the accident other than the cut. Plaintiff's initial arthroscopy repaired a congenital deformity and Zand specifically indicated that it was "not secondary to the trauma." There was no evidence establishing that the damaged cartilage repaired in plaintiff's second arthroscopy was related to the accident. Similarly, there was nothing linking her muscle loss to the collision. On this record, the trial court was correct in concluding, as a matter of law, that plaintiff failed to establish that the accident was the cause in fact of her knee condition. Summary disposition was therefore appropriate. This conclusion makes it unnecessary to address plaintiff's additional claim that she suffered a serious impairment of body function.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham