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STATE OF MICHIGAN

COURT OF APPEALS

OMIKA SIMMON, Plaintiff-Appellant,	UNPUBLISHED October 13, 2026 1:28 PM
v	No. 373218 Wayne Circuit Court LC No. 22-006983-NF
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellee.	

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

In this insurance coverage dispute involving first-party personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., plaintiff, Omika Simmon, appeals by right following the jury's verdict of no cause of action in favor of defendant, State Farm Mutual Automobile Insurance Company. Plaintiff advances several arguments regarding the testimony of defense expert, Paul Drouillard, D.O., and challenges the trial court's partial directed verdict regarding plaintiff's claim for PIP benefits related to physical therapy treatments. For the reasons stated in this opinion, we affirm.

I. BACKGROUND AND FACTS

In August 2019, plaintiff was involved in a motor vehicle accident when she was stopped at a red light. After two other cars pulled up behind her, another driver approached the three cars using an improper lane and collided with one of the cars, causing a chain-reaction accident in which the car behind plaintiff hit the rear end of plaintiff's sedan. Plaintiff was "jerked forward" and her knee hit the steering wheel. She was "in shock," did not feel pain, and drove herself home. She did not have to make any repairs to her sedan. The next day, plaintiff felt soreness in her shoulders, neck, knee, and lower back. She visited her primary care physician (PCP), who provided her with pain medication and referred her to the emergency room. Two days after the accident, plaintiff did not receive testing at the emergency room but was instructed to take Motrin for soreness and follow-up with her PCP. After conducting an electromyography (EMG) test,

plaintiff's PCP found that plaintiff "had upper extremity paraesthesia," and referred her for pain management and a chiropractor.

Before the accident, plaintiff had back and episodic knee pain from work-related activities and shoulder pain. Plaintiff did not have preexisting neck pain. She testified that her back and shoulder pain worsened after the accident. Plaintiff returned to work with restrictions following the accident, working only several hours per day.

Plaintiff had an automobile insurance policy with defendant. She submitted a claim for PIP benefits in November 2019 and began receiving those benefits. Plaintiff was examined for complaints of lower back and neck pain by Mohamed Raychouni, D.C., at Michigan Spine Management Clinic PLC, beginning in November 2019. Dr. Raychouni found hypertonicity of several areas of plaintiff's musculature and treated with a manual osseous spinal adjustment to improve mobility. Around the same time, plaintiff began receiving treatment from Mustafa Shukr, M.D., a general surgery specialist, at Michigan Pain Management. Plaintiff received injections and was ordered to continue receiving chiropractic care and to undergo MRIs. Plaintiff also visited Zubair Sarmast, M.D., a board-certified orthopedic surgeon, for a radiology review on an MRI performed on her left knee.

In June 2020, Dr. Drouillard, a board-certified orthopedic surgeon, conducted an insurance medical examination (IME) of plaintiff.[1] Dr. Drouillard assessed plaintiff's left knee, left shoulder, neck, upper back, and lower back by physically examining plaintiff, taking her history, and reviewing medical records, including supplemental MRIs. Dr. Drouillard did not make any findings that suggested that plaintiff suffered a new injury or aggravation of preexisting conditions because of the accident. On June 19, 2020, defendant ceased providing PIP benefits.

In June 2022, plaintiff filed a complaint seeking the payment of PIP benefits from defendant for injuries sustained in the accident. She sought PIP benefits dating from July 6, 2021 forward which encompassed chiropractic treatment with Dr. Raychouni from July 2021 through July 2023, trigger points impedance imaging (TPII) at Level 1 Physical Therapy for lower back pain in April and May 2022, and medical mileage.[2] Plaintiff moved to strike defendant's expert witness, Dr. Drouillard, under MCL 500.3151(2)(a) because she was no longer being treated by an orthopedic surgeon, nor was she claiming PIP benefits for any orthopedic care, as she was only receiving physical therapy and chiropractic treatment. She asserted that Dr. Drouillard, a board-certified orthopedic surgeon, was not in the same field as Dr. Raychouni, a board-certified chiropractic physician. Defendant opposed plaintiff's motion to strike. The court granted in part

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[1] "Although IMEs are commonly referred to as 'independent medical examinations,' that appellation is a euphemistic term of art." *Micheli v Mich Auto Ins Placement Facility*, 340 Mich App 360, 364 n 3; 986 NW2d 451 (2022). "[A]n IME involves obtaining a second opinion from a doctor who is entirely selected and paid for by an insurance company, rendering the 'independence' of the examination somewhat questionable." *Id*.

[2] Plaintiff also sought payment of a bill from OrthoCor, but the trial court granted defendant's motion in limine to remove the claim. That bill is not at issue on appeal.

and denied in part plaintiff's motion to strike, allowing Dr. Drouillard to testify as a witness but precluding as evidence the admission of his IME report.

The parties conducted *de bene esse* depositions, which were played at trial. Dr. Drouillard testified that he determined that plaintiff did not sustain any new injuries or have any ongoing conditions because of the accident. Regarding one of the photographs of plaintiff's sedan after the accident, Dr. Drouillard stated there was "no visible damage," which "would suggest that whatever occurred was an extremely minor event." Dr. Drouillard concluded that plaintiff was not injured from the accident and required no further treatment.

By contrast, Dr. Shukr opined that plaintiff's injuries were caused by the accident. Dr. Shukr stated it was more likely than not that the accident caused or aggravated injuries to plaintiff's shoulders, knees, neck, and back. Dr. Shukr diagnosed plaintiff with cervical sprain/strain, lumbar sprain/strain, left shoulder sprain/strain, and bilateral knee sprain/strain, and muscle spasms. He provided treatment, including injections in plaintiff's neck. Dr. Raychouni likewise attributed plaintiff's injuries to the accident, noting that the injuries were consistent with the type of accident. Dr. Raychouni found that plaintiff had hypertonicity, or a muscle spasm and stiffness, of her lower back, mid-back, and neck, and a misalignment of her T4 and L5 in her spine. Sabah Dehko, the owner of Level 1 Physical Therapy, stated that plaintiff had 10 trigger points treated in her lumbar spine.

Plaintiff testified regarding the accident and her treatments, explaining that she "can't do anything [she] used to do" before the accident because of her knee. Plaintiff also stated that her chiropractic treatment and TPII treatments helped her injuries.

Shortly before trial commenced, plaintiff filed a motion in limine again seeking to preclude the testimony of Dr. Drouillard under MCL 500.3151(2)(a), which defendant opposed. At trial, the court determined Dr. Drouillard was not precluded from testifying under the statute. The court reasoned that MCL 500.3151(2)(a) was "not relevant to this issue," because it related to "whether or not the insurance carrier can request an IME."

At trial, plaintiff's counsel requested that the court strike Dr. Drouillard's testimony regarding the photograph of plaintiff's sedan, specifically, that there was "no visible damage," which was significant because it "would suggest that whatever occurred was an extremely minor event." The court stated that the objected-to testimony was allowable on the basis of Dr. Drouillard's observations, and that Dr. Drouillard only noted that it "was a minor event" and "didn't relate that to his medical care in any way."

Defendant moved for a partial directed verdict regarding the physical therapy bills, asserting that plaintiff had failed to establish that the physical therapy treatments were prescribed by an authorized doctor as required under MCL 500.3107b. Plaintiff's counsel argued that the treatments were ordered by the referring physician, or alternatively that under MCL 333.17820(1)(a), physical therapy may be conducted without a prescription for 21 days or 10 treatments. The court granted the motion for a partial directed verdict regarding the physical therapy bills.

The jury determined that plaintiff sustained an accidental bodily injury or an aggravation of a preexisting injury, but that the "accidental bodily injury and/or aggravation of preexisting injury" did not "arise out of the ownership, operation, maintenance[,] or use of a motor vehicle as a motor vehicle." The trial court entered a judgment of no cause of action based on the jury's verdict in favor of defendant.

Plaintiff now appeals.

II. STANDARDS OF REVIEW

This Court reviews for an abuse of discretion a trial court's decision to exclude or admit evidence. *Elher v Misra*, 499 Mich 11, 21; 878 NW2d 790 (2016). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Id*. (quotation marks and citation omitted). Questions of law underlying an evidentiary ruling, such as the interpretation of court rules and statutes, are reviewed de novo. *Id*. "De-novo review means that we review the legal issue independently, without deference to the lower court." *Bowman v Walker*, 340 Mich App 420, 425; 986 NW2d 419 (2022) (quotation marks and citation omitted). "The admission or exclusion of evidence because of an erroneous interpretation of law is necessarily an abuse of discretion." *Elher*, 499 Mich at 21.

Error in the admission of evidence is not a ground for reversal "unless refusal to take this action appears . . . inconsistent with substantial justice." MCR 2.613(A). This "harmless-error rule, which generally applies to civil proceedings," prohibits us from granting relief on appeal unless "it is more likely than not that the error affected the case's outcome." *In re Miller*, 347 Mich App 420, 429; 15 NW3d 287 (2023) (citation omitted). See also *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 157-158; 908 NW2d 319 (2017) ("[A]n evidentiary error is not ordinarily grounds for appellate relief, and such relief is appropriate only when the error results in substantial prejudice that denies a fair trial to the aggrieved party.").

"Statutory interpretation is a question of law, which this Court . . . reviews de novo." *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010). "When interpreting the meaning of a statute, our primary goal is to discern the intent of the Legislature by first examining the plain language of the statute." *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). "Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning." *Id.* "If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written." *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 410; 987 NW2d 501 (2022) (quotation marks and citation omitted).

"We review de novo a trial court's decision on a motion for directed verdict." *Anaya v Betten Chevrolet, Inc*, 330 Mich App 210, 215; 946 NW2d 560 (2019). "A directed verdict is appropriate only when no factual question exists upon which reasonable minds could differ." *Id.* (citations omitted). This Court will "view the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Smith v Foerster-Bolser Const, Inc*, 269 Mich App 424, 428; 711 NW2d 421 (2006) (quotation marks and citation omitted).

III. ANALYSIS

A. ADMISSIBILITY OF EXPERT TESTIMONY UNDER MCL 500.3151

Plaintiff first contends that the trial court erred by allowing Dr. Drouillard's testimony at trial because it was barred by MCL 500.3151. We disagree.

MCL 500.3151 governs IMEs, mental and physical examinations that serve as an "investigatory tool for an insurer" under the no-fault act. *Zielinski v Auto-Owners Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 371692); slip op at 9. Relevant here, the statute specifies the requisite qualifications for physicians conducting IMEs. MCL 500.3151 states, in pertinent part:

> (1) If the mental or physical condition of a person is material to a claim that has been or may be made for past or future personal protection insurance benefits, at the request of an insurer the person shall submit to mental or physical examination by physicians. A personal protection insurer may include reasonable provisions that are in accord with this section in a personal protection insurance policy for mental and physical examination of persons claiming personal protection insurance benefits.
>
> (2) A physician who conducts a mental or physical examination under this section must be licensed as a physician in this state or another state and meet the following criteria, as applicable:
>
> (a) If care is being provided to the person to be examined by a specialist, the examining physician must specialize in the same specialty as the physician providing the care, and if the physician providing the care is board certified in the specialty, the examining physician must be board certified in that specialty.

As stated, Dr. Drouillard, an orthopedic surgeon, performed an IME in this case. Plaintiff does not dispute that Dr. Drouillard was qualified to perform an IME in June 2020. Rather, plaintiff argues that MCL 300.3151 "permits testimony only from a physician board certified in the same specialty as the physician providing care." Therefore, according to plaintiff, because Dr. Drouillard does not share the same specialty as the physicians who provided care regarding the claimed benefits at issue—that is, physical therapy and chiropractic care—his testimony at trial was barred by MCL 500.3151.

We disagree with plaintiff's argument because nothing in the plain language of MCL 500.3151 speaks to what evidence or testimony is or is not admissible at trial. See *Driver*, 490 Mich at 246-247. Instead, the statute mandates the qualifications for the physician conducting an IME, including the specialization and board-certification matching requirements. MCL 500.3151.

Accordingly, because the statute does not address trial testimony, Dr. Drouillard's testimony was not barred by MCL 500.3151.[3]

Plaintiff argues that his position is supported by the fact that MCL 500.3151(2) "parallels" MCL 600.2169. MCL 600.2169 governs expert witnesses and qualification requirements in medical malpractice cases, stating in relevant part:

> (1) In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:
>
> (a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty.
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> (b) Subject to subdivision (c), during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to either or both of the following:
>
> (*i*) The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty.
>
> (*ii*) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

Plaintiff is correct that MCL 600.2169 imposes conditions on expert witnesses seeking to testify in a medical malpractice action. But we do not agree that MCL 500.3151 "parallels" MCL 600.2169. Whereas our Legislature precluded certain testimony at trial in medical malpractice cases when the health professionals in question have differing specialties, no such language pertaining to testimony is found in MCL 500.3151.

Plaintiff impliedly invokes the doctrine of *in pari materia*, which holds that "statutes that relate to the same subject or that share a common purpose should, if possible, be read together to

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[3] "[T]he court rules control matters on which the no-fault act is silent" unless "matters [are] specifically addressed by the act." *Muci v State Farm Mut Auto Ins Co*, 478 Mich 178, 190; 732 NW2d 88 (2007). Plaintiff does not argue that Dr. Drouillard's testimony was barred by a court rule or rule of evidence, so we do not address that question.

create a harmonious body of law." *Pueblo v Haas*, 511 Mich 345, 357; 999 NW2d 433 (2023) (quotation marks and citations omitted). But "[a]n act that incidentally refers to the same subject is not *in pari materia* if its scope and aim are distinct and unconnected." *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015). MCL 500.3151 and MCL 600.2169, which appear in different statutory schemes, should not be read *in pari materia* because they have distinct purviews and purposes. See *id.* That is, MCL 500.3151 describes the required credentials of physicians who perform IMEs in no-fault cases, whereas MCL 600.2169 sets out the requirements for expert witness testimony in medical malpractice cases. See *Stokes v Swofford*, 514 Mich 423, 432; 22 NW3d 97 (2024).

If the Legislature intended to proscribe expert testimony in no-fault cases in the manner that plaintiff contends, it could have included such a requirement in MCL 500.3151. For example, MCL 500.3153(e) allows a trial court to exclude a physician's testimony *at trial* if he or she "fails or refuses to make the report" under MCL 500.3152. MCL 500.3153(e). Unlike this provision, however, MCL 500.3151 contains no such language regarding trial testimony. Thus, the trial court did not err by rejecting plaintiff's argument that MCL 500.3151 precluded Dr. Drouillard's testimony.

B. ADMISSIBILITY OF TESTIMONY REGARDING PHOTOGRAPH

Plaintiff also contends that the trial court erred by allowing Dr. Drouillard to testify regarding the photograph of her sedan. Although we agree that the testimony was inadmissible, plaintiff is not entitled to reversal.

"Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." MRE 401. A fact of consequence is one that "is within the range of litigated matters in controversy." *Morales v State Farm Mut Auto Ins Co*, 279 Mich App 720, 731; 761 NW2d 454 (2008). Relevant evidence is admissible, unless otherwise provided by law, and irrelevant evidence is inadmissible. MRE 402. Further, opinion testimony by a lay witness is allowable when it is "(a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue." MRE 701. Regarding expert witness testimony, MRE 702 states:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
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> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

"This rule requires the circuit court to ensure that each aspect of an expert witness's testimony, including the underlying data and methodology, is reliable." *Elher*, 499 Mich at 22. MRE 702 incorporated the reliability requirements articulated in *Daubert v Merrell Dow Pharms, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993). *Danhoff v Fahim*, 513 Mich 427, 445; 15 NW3d 262 (2024). "An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. The facts or data must be in evidence . . . ." MRE 703.

A photograph of the rear end of plaintiff's accident vehicle was admitted at trial. Plaintiff objected to the following testimony regarding the photograph:

> [*Defendant's attorney*]: Doctor, does this photograph carry any significance to you?
>
> [*Dr. Drouillard*]: Yes.
>
> [*Defendant's attorney*]: In what way?
>
> [*Dr. Drouillard*]: There's no visible damage.
>
> [*Defendant's attorney*]: And why is it significant to you that there's no visible damage shown on the vehicle?
>
> [*Dr. Drouillard*]: It would suggest that whatever occurred was an extremely minor event.

The "gateway question" is whether Dr. Drouillard's testimony "constituted expert testimony or lay opinion testimony, i.e., whether MRE 702 or MRE 701 applies, respectively." *People v Fomby*, 300 Mich App 46; 831 NW2d 887 (2013). Plaintiff argues that Dr. Drouillard could not offer such expert testimony because he has no expertise in accident reconstruction or a related field. We agree with plaintiff that Dr. Drouillard, as an orthopedic surgeon, would not have had the necessary expertise to opine on whether visible damage to a vehicle was causally connected to a crash victim's injuries, as this would be outside the scope of his knowledge and expertise. But this portion of the testimony, which simply opined on the suggested magnitude of the accident after viewing a photograph of plaintiff's vehicle, is properly characterized as lay witness testimony.[4] See *Fomby*, 300 Mich App at 50.[5]

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[4] The premise underlying plaintiff's objection to Dr. Drouillard's testimony is that the testimony causally linked the absence of damage to the vehicle to a lack of injury. However, in the portion of testimony to which plaintiff objected, Dr. Drouillard *did not* opine that the photograph of plaintiff's accident vehicle influenced his opinion about whether plaintiff was injured. Instead, Dr. Drouillard merely stated that the photograph "suggest[ed] that whatever occurred was an extremely minor event." Regardless, however, as we have explained, Dr. Drouillard's testimony on this matter did not qualify as expert testimony.

[5] Because we analyze the challenged remarks as lay testimony, we need not address plaintiff's argument that MCL 600.2955, applicable to actions for injuries to persons, applies in this no-fault

The next question is whether the testimony was properly admitted under MRE 701. Although Dr. Drouillard's observation about the photo was "rationally based on [his] perception," it was not "helpful to clearly understanding the witness's testimony or to determining a fact in issue." MRE 701. Indeed, the testimony did not shed any light on whether the automobile collision caused plaintiff's injuries, so it was not helpful to "determining a fact in issue." MRE 701. For the same reason, it was not relevant. See MRE 401. Accordingly, it was not admissible. See MRE 402.

But reversal "is appropriate only when the error results in substantial prejudice that denies a fair trial to the aggrieved party." *Mitchell*, 321 Mich App at 157-158. Examining the record as a whole, we do not believe that is the case here. The jury had the opportunity to look at the photograph itself, as the photograph was admitted into evidence. Dr. Drouillard's objected-to testimony regarding the photograph was brief, and defendant's counsel did not reference Dr. Drouillard's testimony on this point in closing. And to the extent that the testimony improperly implied a causal link with injury, plaintiff countered its potential harmful effect through her expert Dr. Shukr, who explained that a "[f]ender bender . . . can cause a lot of damage to the patient[;] it doesn't matter if . . . there wasn't that much damage to the car" and that the injury has more to do with "how the energy was translated."

Meanwhile, the properly-admitted evidence included medical expert testimony from several treating providers regarding plaintiff's injuries and treatment, medical expert testimony from Dr. Drouillard, and plaintiff's own testimony regarding her injuries, treatment, and preexisting injuries. In light of the above, we cannot say that "it is more likely than not that the error affected the case's outcome." *In re Miller*, 347 Mich App at 429. Accordingly, plaintiff "cannot establish the prejudice necessary to overcome the harmless-error rule, and reversal is unwarranted." *Id.* at 431; MCR 2.613(A).

C. PARTIAL DIRECTED VERDICT

Plaintiff lastly contends that the trial court erred by granting defendant a partial directed verdict regarding her claim that she was entitled to PIP benefits from defendant for her physical therapy bills. We conclude that it is unnecessary to address this issue. Because plaintiff's claims of evidentiary error as discussed above do not entitle her to relief, the jury's causal determination that plaintiff's "accidental bodily injury and/or aggravation of preexisting injury" *did not* "arise out of the ownership, operation, maintenance[,] or use of a motor vehicle as a motor vehicle" stands. The contested issue with respect to the directed verdict concerns whether, if causation was established, certain bills are compensable. Because the jury found no causation and that finding

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action, or that Dr. Drouillard's expert opinion testimony does not satisfy the requirements in that statute.

remains undisturbed on appeal, any error by the trial court with regard to what bills were compensable was harmless. See MCR 2.613(A).

IV. CONCLUSION

Dr. Drouillard's testimony was not barred by MCL 500.3151. Although Dr. Drouillard's objected-to testimony regarding the photograph of plaintiff's sedan was not admissible, reversal is not warranted because this error was not prejudicial. Finally, we decline to address plaintiff's argument regarding the partial directed verdict.

Affirmed. Defendant may tax costs as the prevailing party. See MCR 7.219(A).

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado