

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT CHINOSKI, Personal Representative of
the ESTATE OF BARBARA CHINOSKI,

UNPUBLISHED
March 17, 2015

Plaintiff-Appellant,

v

DINO ANTHONY PALAZZI,

No. 319904
Macomb Circuit Court
LC No. 2012-001556-NI

Defendant-Appellee.

Before: DONOFRIO, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

Plaintiff, personal representative of decedent Barbara Chinoski's estate, appeals as of right the trial court's opinion and order granting defendant Dino Anthony Palazzi's motion for summary disposition. Because the trial court erroneously sua sponte granted summary disposition on Count I of plaintiff's claim, we reverse in part and remand.

Defendant's vehicle hit an SUV while traveling south on Gratiot Avenue in Roseville, Michigan. The driver of the SUV lost control and struck plaintiff's decedent, Chinoski, who was a pedestrian standing in a grassy median separating the north- and south-bound lanes of traffic on Gratiot. She suffered a fracture of her right leg and a closed-head injury. At the time of the accident, Chinoski reported that she was already taking several prescription pain killers for management of pain and muscle spasms. Chinoski died more than two years after the accident. The medical examiner ruled that her death was caused by "Intoxication by the Combined Effects of Heroin and Prescription Medications." The toxicology report revealed that the decedent had a documented history of Peripheral Vascular Disease (PVD) and Raynaud's Syndrome and that she "self-reported IV heroin abuse as well as methadone abuse."

Plaintiff filed a two-count complaint against defendant. In Count I, plaintiff alleged a negligence claim; specifically, plaintiff claimed that defendant breached a duty of care he owed to Chinoski when he caused the accident that injured her and that, as a result of that negligence, Chinoski suffered ongoing pain and her life expectancy was adversely affected. Plaintiff also alleged that any conditions Chinoski previously suffered were "aggravated, exacerbated, and/or accelerated" by defendant's neglect. In Count II of the complaint, plaintiff contended that "as a direct and proximate result of the defendant's negligence, Chinoski was prescribed by her doctors many and varied medications, including very strong medications with side effects of

potential injury and death” and she took these prescribed medications, “which contributed to and/or caused and/or exacerbated and/or made worse her previous condition, leading to her demise.”

Defendant moved for partial summary disposition, arguing that the wrongful death claim should be dismissed because plaintiff could not prove that any negligence by defendant was linked to Chinoski’s death and the facts showed that she used heroin and other drugs, including pharmaceuticals, years before the accident. The trial court granted summary disposition to defendant on both counts under MCR 2.116(C)(10), finding no dispute that Chinoski died from “intoxication by the combined effects of heroin and prescription drugs.” The court further found that, to the extent defendant was culpable in the accident, there was no genuine issue of fact that he was less than 50 percent responsible for the level of narcotics in Chinoski’s system when she died and that plaintiff “may not recover for his decedent’s wrongful conduct which was indisputably a proximate and a but-for cause” of her death.

This Court reviews a trial court’s ruling on a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo. *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). “A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Curry v Meijer, Inc*, 286 Mich App 586, 590; 780 NW2d 603 (2009).

On appeal, plaintiff does not challenge the trial court’s ruling with respect to Count II, the wrongful death count. Instead, plaintiff’s sole issue on appeal is that the trial court erred in dismissing Count I because defendant never moved for summary disposition on this particular count. Of note, MCR 2.116(I)(1) provides that “[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.” This court rule “does not expressly require a motion under MCR 2.116(C) in order to grant summary disposition; nor does the rule in question expressly forbid summary disposition absent a motion under MCR 2.116(C).” *Boulton v Fenton Twp*, 272 Mich App 456, 462; 726 NW2d 733 (2006). In fact, “the rule mandates that if one of two conditions is met, then the court ‘shall render judgment without delay.’” *Id.* at 463 (emphasis added). Thus, it is clear that the court had the *authority* to rule on Count I, but we must determine whether the court properly exercised that authority.

Count I alleged that defendant’s negligence caused the vehicle accident, which in turn caused Chinoski to suffer many injuries, including in pertinent part, injuries to her tibia, fibula, neck, back, head, hands, wrists, and arms. Plaintiff also alleged that Chinoski suffered “severe excruciating physical, mental and emotional pain” as a result of these various injuries and that “she suffered and sustained a serious impairment of body function, permanent scarring, and disfigurement.” Thus, Count I appears to be a general negligence claim asserted on Chinoski’s

behalf by her personal representative¹ against defendant for noneconomic damages incurred up until the time of her demise as a result of the vehicle accident.²

Even though Chinoski was not using a vehicle at the time of the accident, no-fault principles still apply. That is because no-fault PIP benefits are implicated simply “if the injury arises from a motor vehicle accident.” MCL 500.3114(1). However, under no-fault principles, tort liability for noneconomic losses generally is limited to instances in which the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement, as is alleged in Count I. MCL 500.3135(1).

It is important to recognize that defendant’s motion for partial summary disposition focused on the sole issue of whether the vehicle accident *caused Chinoski’s death*. Specifically, the court based its ruling on the fact that the decedent’s death was caused by the “combined effects of heroin and prescription drugs” and that the evidence established that defendant “was less than 50% responsible for the level of narcotics in Chinoski’s system at the time of her death.” Thus, the trial court’s decision on this narrow issue is not dispositive on the remaining Count I because plaintiff may still recover noneconomic damages if the accident caused her to suffer a serious impairment of a body function or permanent serious disfigurement. But because whether the accident caused either of these two conditions was not at issue, plaintiff was not required to, and did not, present any evidence on this topic. Therefore, because plaintiff had no notice that these other issues would be decided, the failure to produce any evidence on these matters was excused. Furthermore, while defendant presented ample evidence demonstrating that Chinoski’s illegal drug use likely was not linked to the accident, the drug use, itself, while it may be relevant in limiting damages, it is not determinative as to whether she could have suffered any noneconomic loss (e.g., pain and suffering) as a result of the injuries she sustained from the accident. Consequently, the trial court procedurally erred when it dismissed Count I.

We reverse the portion of the order granting summary disposition in favor of defendant on Count I, and we remand for proceedings consistent with this opinion viz a hearing on the motion for summary disposition concerning Count I. We do not retain jurisdiction. Plaintiff as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Michael J. Riordan
/s/ Michael F. Gadola

¹ Chinoski’s own claims survive her death because of Michigan’s survival statute, MCL 600.2921.

² To the extent that the complaint could be read as seeking economic damages for medical expenses, plaintiff admitted at the trial court that the case was not about economic damages when counsel conceded that an insurance carrier had paid up until the time of Chinoski’s death “all of her benefits, including prescription drugs, including attendant care, including all of her medical.”