STATE OF MICHIGAN

COURT OF APPEALS

MCLAREN FLINT,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee,

and

NATIONAL GENERAL INSURANCE CO and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants.

UNPUBLISHED
July 20, 2023

No. 361213
Genesee Circuit Court
LC No. 20-115019-NF

ALEXANDER WARCZINSKY-KELLER,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee,

and

NATIONAL GENERAL INSURANCE CO and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants,

No. 361214
Genesee Circuit Court
LC No. 20-114869-NF

and

HURLEY MEDICAL CENTER,

Intervening Plaintiff.

Before: CAMERON, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

Plaintiffs, McLaren Flint and Alexander Warczinsky-Keller, appeal as of right the trial court's order granting summary disposition in favor of defendant Allstate Insurance Company under MCR 2.116(C)(10).[1] We affirm.

I. BACKGROUND

On November 25, 2019, Warczinsky-Keller was in a pedestrian-involved motor vehicle accident and, as a result, sustained personal injuries. Jason Step witnessed the accident. According to the police report, Step reported to the responding officer from the Genesee County Sheriff's Office that he was driving southbound on Saginaw Road[2] when he almost struck Warczinsky-Keller, "who was dressed in dark colored clothing, standing in the middle of the roadway with his arms stretched out." Step stated that after passing Warczinsky-Keller, he called 911, turned around, put his hazards on, and flashed his headlights at oncoming traffic trying to warn others of Warczinsky-Keller, who was still standing in the roadway. Shortly thereafter, another vehicle traveling southbound struck Warczinsky-Keller. Step also provided a written statement that mirrored his verbal statement to the officer, but his written statement included that Warczinsky-Keller's arms and legs were out, and he was standing in the middle of the lane waiting to be struck. Step indicated that after Warczinsky-Keller was struck, he flew through the air. Step added that it was not the fault of the driver who hit Warczinsky-Keller because he was "almost impossible to see in dark clothing and was clearly trying to get hit." The driver who struck Warczinsky-Keller, Jimi Tate, provided a written statement. In her statement, Tate wrote that she was driving home from work in the left lane, and a truck came into her lane with flashing lights, so she moved into the right lane because "he"[3] swerved and she hit the man in the road. Tate was also interviewed by an officer who detailed Tate's statement as follows:

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[1] Intervening plaintiff Hurley Medical Center's claims were also dismissed as a result of this order, however, Hurley Medical Center is not a party to this appeal.

[2] The traffic crash report lists the road where the accident occurred as Saginaw Road, however, the parties refer to this road as both Dixie Highway and Saginaw Road throughout the case. Dixie Highway changes to North Saginaw Road almost directly in front of Warczinsky-Keller's address.

[3] Based on Tate's verbal statement to an officer, "he" appears to refer to the driver of the vehicle that was driving in front of Tate, who swerved around Warczinsky-Keller.

> Tate stated she left work at the outlets in Birch Run and was traveling southbound on Saginaw Rd. [i]n the left lane, behind another vehicle. Tate stated she saw a vehicle in her lane flashing its head lights then moved over to the right lane. After moving over to the right lane, the vehicle in front of her swerved then she hit a [sic] what she thought to be a person who was walking in the middle of the road. Tate stated she had no time to react and the person came out of nowhere and was wearing all dark cloths [sic]. Tate voluntarily submitted to a PBT and blew .000.

Step testified at his deposition consistent with what he was reported as stating in the police report. He said that he was driving southbound on Dixie Highway[4], a four-lane road, and Warczinsky-Keller was standing in the right lane of the two southbound lanes. Step testified that he swerved, went around Warczinsky-Keller, turned around, and pulled over to the opposite side of the road to call 911. Step told 911, "Look, there's somebody standing out in the road with their arms and legs spread wide open in all black and they're going to get killed." Step testified that he kept telling 911 to hurry as he watched two cars almost hit Warczinsky-Keller on the "55 mile an hour highway." Step testified that as the cars almost struck and swerved around Warczinsky-Keller, even "actually hit his coat," Warczinsky-Keller did not budge; "he didn't even move. Didn't flinch or nothing." Step pointed his headlights on Warczinsky-Keller in attempt to illuminate him and warn other drivers, but Tate did not see Warczinsky-Keller until the last second and hit him. Step was still on the phone with 911 when Warczinsky-Keller was hit, and Step's horrified reaction was recorded. Step further testified that after Warczinsky-Keller was struck by the vehicle, his friends came out of the apartment and "you could clearly see that they had all been drinking. Their eyes were glassy, red, you could smell it on them." Step also stated that "they admitted to me that they were drinking and partying." Step testified that the friends indicated that Warczinsky-Keller "had just gotten in a bad argument with his long time girlfriend and she dumped him and said that he wanted to kill himself." When questioned exactly who said this, Step testified that it was Warczinsky-Keller's buddy Cory and the "lady that was the RN also said it."[5] When asked whether he could think of any reason why Warczinsky-Keller would have been standing in the road that was not to cause an accident or injure himself, Step responded, "No." Step elaborated:

> But somebody standing like this in the middle of the road and doesn't flinch, it's pretty obvious what they're doing. They're inviting death. That's why their arms are wide open. That's what they're saying, "Come and take me away," that's what that means. I mean, it's clearly obvious.

* * *

[4] See footnote 1.

[5] "Cory" refers to Margaret Blasdell's boyfriend at the time of the accident, Cory Kirk. "The lady that was the RN" may be referring to Margaret Blasdell, who testified that she had a four-year associate's degree in applied health science for medical assisting, with nursing credits.

> You know, if anything, if I was [Tate], I would want to sue somebody for doing that to me, to tell you the truth, for wrecking my life, you know.

Tate testified at her deposition that she was driving on Dixie Highway when she saw a truck with its lights flashing, so she slowed down and switched lanes and hit Warczinsky-Keller, who was standing in the road with his arms up.

Following a thorough investigation, the Genesee County Sheriff's Office concluded that Warczinsky-Keller was impossible to see in his dark clothing on the unlit Saginaw Road, where pedestrian traffic was not common at the time of the accident. The Sheriff's Office concluded that based on the physical evidence and witness statements, Tate acted appropriately and showed "no fault in the crash."

Warczinsky-Keller's then-girlfriend and his friends testified at their depositions as to the events leading up to the accident. During her deposition, respondent's then-girlfriend, Savanna Raison, testified that on the date of the accident, she went to a lake with Warczinsky-Keller; her aunt, Margaret Blasdell; and Margaret's boyfriend, Cory Kirk. Raison denied that anyone in the group was drinking at the lake. Raison testified that she purchased alcohol with Warczinsky-Keller at a gas station prior to returning to his residence for a friends' gathering. Raison observed that Warczinsky-Keller was drinking; however, she could not testify as to whether Warczinsky-Keller was drunk. Raison denied having an argument with Warczinsky-Keller, but she described a conversation in which Warczinsky-Keller mistakenly called her "Jenny." After correcting Warczinsky-Keller, Raison testified that Warczinsky-Keller apologized to her, she said it was fine and walked out of the room to smoke a cigarette, and he walked outside to smoke a cigarette. Raison testified that she was not angry, did not yell at Warczinsky-Keller, and did not threaten to break up or end her relationship with him. She further testified that Warczinsky-Keller never gave her any indication that he wanted to hurt himself, either before or on the day of the accident. Raison also testified that Warczinsky-Keller had a nightly routine of going outside, smoking a cigarette to clear his mind, and cooling off for the night before going to bed so he could sleep better. She said that Warczinsky-Keller following this routine was not an indication what he was upset.

Raison was also interviewed by an officer on the night of the accident. She reported that she was hanging out and drinking at Warczinsky-Keller's apartment with friends. Raison stated that she and Warczinsky-Keller then went to his bedroom and "began to kiss and mess around." Raison stated that Warczinsky-Keller then called her "Jenny," which was his ex-girlfriend's name. Raison said that she became upset, walked out of the bedroom and began to drink and dance with her friends. Raison reported that she saw Warczinsky-Keller walk outside and that she thought he was going to smoke and cool off. Raison stated that "the next thing she knew she saw flashing lights in the road and walked outside and saw [Warczinsky-]Keller laying in the middle of the roadway."

Faith Blasdell, Warczinsky-Keller's friend for over ten years, shared an apartment with Warczinsky-Keller and was there the night of the accident when he returned with her mother, Margaret; Cory; and Raison from a lake. Faith testified that Warczinsky-Keller and Raison were drinking, went into Warczinsky-Keller's bedroom, came out joking and laughing, and Warczinsky-Keller went outside to check the mail. Faith denied that Warczinsky-Keller ever had

any mental health issues and stated that he was the "happiest person." When Faith was asked whether she thought the accident was an attempt by Warczinsky-Keller to commit suicide, she denied it, stating that when she and Warczinsky-Keller were younger, they were in a support group for suicidal teens, and he would speak about how suicide is never worth it. Faith also testified that Warczinsky-Keller and Raison were a happy couple, not known to argue.

Margaret had also known Warczinsky-Keller for over ten years, and at the time of the accident, lived in a duplex next door to Warczinsky-Keller and Faith. She testified that the group returned from a lake to Warczinsky-Keller's apartment around 7:00 or 8:00 p.m., had a cookout for about an hour and a half, and then she went home to go to bed. She admitted that after the cookout, the next time she saw Warczinsky-Keller was when he was lying in the road, so she did not know what occurred in between the cookout ending and the accident. Margaret testified that Warczinsky-Keller was not drunk on the night of the accident. She also denied that Warczinsky-Keller had ever expressed an intent to harm himself or commit suicide, and stated that he was a very happy person.

Warczinsky-Keller testified at his deposition that he does not have any personal recollection of anything that occurred on the date of the accident. Warczinsky-Keller testified that he had no recollection of wanting to get hit by a vehicle that night, and he denied ever having any type of suicidal ideations or suicide attempts. When asked whether he thought he was standing in the roadway intentionally trying to get hit by a vehicle that night, Warczinsky-Keller responded: "I just know I wasn't trying to get hit, because I've never been suicidal, I've never—I don't understand what may have caused that night, but suicide, never been a thing of mine ever to think of, let alone try."

Finally, Warczinsky-Keller's mother was interviewed by an officer on the night of the accident and reported that she spoke to Warczinsky-Keller on the telephone earlier in the evening and that she could hear him fighting with Raison. She also reported that Warczinsky-Keller had never tried to hurt himself.

In Docket No. 361214, Warczinsky-Keller filed a complaint for no-fault PIP benefits on November 4, 2020. On July 22, 2021, the trial court entered a stipulated order allowing Hurley Medical Center to intervene in Warczinsky-Keller's lawsuit for the medical care it provided to Warczinsky-Keller. In Docket No. 361213, McLaren Flint filed a complaint for reimbursement of healthcare services provided to Warczinsky-Keller as a result of the motor vehicle accident. On December 16, 2021, the trial court entered a stipulated order consolidating McLaren's and Warczinsky-Keller's claims against Allstate.

On December 22, 2021, Allstate filed a motion for summary disposition pursuant to MCR 2.116(C)(10), alleging that Warczinsky-Keller was barred from recovering no-fault benefits as the injuries he sustained were not "accidental," but rather the result of his own intentional act. Allstate argued that there could be no question as to the intentional nature of Warczinsky-Keller's injuries, so neither he nor his medical providers were entitled to no-fault benefits and their claims must be dismissed. Allstate further argued that because Warczinsky-Keller was unable to recall his subjective state of mind on the night of the accident, courts must consider the circumstantial evidence like the circumstances surrounding the accident, which plainly showed that he intended to injure himself.

Warczinsky-Keller filed an answer to Allstate's motion for summary disposition on January 14, 2022. Warczinsky-Keller alleged that the testimony taken from himself and witnesses Raison, Faith, and Margaret, demonstrated that he never intended to injure himself, and he did not have a history of suicide or suicidal behavior. Warczinsky-Keller argued that viewing the evidence in a light most favorable to plaintiffs, the evidence created a genuine issue of material fact in which reasonable minds could differ as to whether Warczinsky-Keller intended to commit suicide or otherwise injure himself. Warczinsky-Keller argued that his testimony created a genuine issue of material fact because he testified that he never had a history of suicidal ideations or self-harm. Warczinsky-Keller further contended that evidence of his blood alcohol content (BAC) at the time of the accident created a genuine issue of material fact as to whether he was able to formulate a specific intent to kill or injure himself—evidence established that his BAC on the night of the accident was .179. Warczinsky-Keller also pointed out that lab records revealed THC in his system the night of the accident, and argued that "it is known that mixing alcohol and THC can enhance the effects of both." In addition, he claimed that the testimony from the Blasdells created genuine issues of material fact because both women knew Warczinsky-Keller for more than ten years prior to the accident and they testified that he was happy and not suicidal.

McLaren filed a response to Allstate's motion for summary disposition on January 18, 2022. McLaren argued that although Allstate claimed to have knowledge of the subjective intent of Warczinsky-Keller at the time he was in the roadway, "nothing regarding his actions or the testimony of those around him suggests that he wanted to injure himself at any time." McLaren stated that to be disqualified from benefits, the insured must have intended both the act that caused the injury as well as the injury itself. McLaren argued that the facts and caselaw established that there was a genuine issue of material fact upon which reasonable minds could differ as there was not enough support for Allstate's position to establish actual intent on the part of someone who could not recall the event.

On January 24, 2022, the trial court held a hearing on Allstate's motion for summary disposition. Allstate argued that the fact that Warczinsky-Keller had no history of suicidal intentions and that his friends said he was not trying to kill himself was all irrelevant. Allstate claimed that what needed to be proven and what it had proved was that Warczinsky-Keller was standing in the middle of the roadway and intended to be hit be a vehicle that night as evidenced by Warczinsky-Keller not even flinching after multiple vehicles almost hit him. Allstate argued that the only reasonable conclusion that could be drawn from the facts presented was that he intended to be hit by a car. Allstate stated that there was no other hypothesis that could be drawn from the facts because Warczinsky-Keller did not remember standing in the roadway that night due to the injuries he sustained as a result of the accident. Allstate also argued that if Warczinsky-Keller intended to be hit by a vehicle on Dixie Highway on which the speed limit is 55 miles per hour, then he necessarily intended to be injured by that vehicle. Allstate argued that no reasonable jury could find that Warczinsky-Keller intended to be hit by a vehicle, but did not intend the resulting injuries.

In response, Warczinsky-Keller argued that evaluating what he was thinking at the time of the accident was typically a fact question reserved for the jury. Warczinsky-Keller argued that his testimony alone created a genuine issue of material fact because he stated that he knew he was not trying to get hit as he had never been suicidal. Warczinsky-Keller stated that if the trial court was not inclined to give much weight to his own testimony of his subjective intent, then the

circumstantial evidence also weighed in favor of a denial of summary disposition. Warczinsky-Keller stated that there are four factors that can be considered when determining subjective intent: (1) the events leading up to the injuries, (2) any overt expressions of suicidal intent, (3) the level of intoxication, and (4) the details surrounding the incident in question. Warczinsky-Keller believed that he had direct evidence of subjective intent based on his own testimony, but the four factors also showed he could not have formed the specific intent to harm himself. Warczinsky-Keller argued that his BAC was .179 two hours after the collision occurred as well as THC in his system, and that both enhance the effects of each drug and negate a specific intent to be injured. This, along with the testimony of Raison and the Blasdells, support that Warczinsky-Keller never had any suicidal ideations. Warczinsky-Keller also argued that if the testimony of two witnesses at the friends' gathering that Warczinsky-Keller stated he was going outside to get the mail is accepted as true, then that is an alternative reason as to why he was outside and in the road. McLaren's argument mirrored Warczinsky-Keller's argument.

The trial court ultimately agreed with Allstate that Warczinsky-Keller's actions established that he intended to be hit and injured. The court found it significant that Step positioned his car to shine his lights on Warczinsky-Keller, which should have indicated to him that drivers could not see him and that he could get run over, yet he did not move. The trial court granted Allstate's motion for summary disposition, but indicated that it felt that it was a close call. On April 13, 2022, the trial court entered the final order dismissing the case with prejudice.

These consolidated appeals followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(10) is proper when "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." Thus, a motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *El-Khalil*, 504 Mich at 160. When deciding such a motion, courts must consider all evidence in a light most favorable to the nonmoving party. *Id*. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Johnson v VanderKooi*, 502 Mich 751, 761; 918 NW2d 785 (2018).

The initial burden in a motion under MCR 2.116(C)(10) rests with the moving party, who can satisfy its burden by either (1) submitting "affirmative evidence that negates an essential element of the nonmoving party's claim" or (2) demonstrating "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (quotation marks and citation omitted). In response to a properly supported motion under MCR 2.116(C)(10), the nonmoving party cannot "rest on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial." *Campbell v Kovich*, 273 Mich App 227, 229; 731 NW2d 112 (2006).

Issues of law, including interpretation of the no-fault act, are reviewed de novo. See *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 477; 760 NW2d 287 (2008); *Frierson v West American Ins Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004).

III. ANALYSIS

The no-fault act, MCL 500.3101 *et seq*., mandates that an insurer is "liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle." MCL 500.3105(1). Bodily injury is "accidental as to a person claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant." MCL 500.3105(4). Thus, recovery of PIP benefits is barred by "people who intended to injure themselves or commit suicide." *Frechen v Detroit Auto Inter-Ins Exch*, 119 Mich App 578, 580; 326 NW2d 566 (1982). "One acts intentionally if he [or she] intended both the act and the injury." *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 226; 553 NW2d 371 (1996). To determine whether an injured person acted intentionally in causing the accident and his or her resulting injuries, the Court focuses on the actual subjective intent of the injured party. *Schultz v Auto-Owners Ins Co*, 212 Mich App 199, 201; 536 NW2d 784 (1995). "Questions concerning the state of one's mind, including intent, motivation, or knowledge can be proven by circumstantial evidence." *Bergen v Baker*, 264 Mich App 376, 387; 691 NW2d 770 (2004). Circumstantial evidence is evidence that would "facilitate reasonable inferences of causation, not mere speculation." *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). "[W]hen the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to" grant judgment as matter of law. *Id.* at 165 (quotation marks and citation omitted).

"Frequently, the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor." *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 12; 596 NW2d 620 (1999) (quotation marks and citations omitted). While an actor's intent to injure himself cannot be judged merely by what is a foreseeable result of his conduct, *Frechen*, 119 Mich App at 581-582, it is nonetheless true that an actor's intent may be reflected in "the natural consequences of his deeds," *Cipri*, 235 Mich App at 12 (quotation marks and citations omitted). See also *Foreman v Foreman*, 266 Mich App 132, 143; 701 NW2d 167 (2005) ("Intent is a mental condition and is determined not so much by what one says as it is by what one does.") (Quotation marks and citation omitted.) " '[W]here the injury is the natural, anticipated and expected result of an intentional act, courts may presume that both act and result are intended.' " *Mattson v Farmers Ins Exch*, 181 Mich App 419, 424; 450 NW2d 54 (1989), quoting *Transamerica Ins Co v Anderson*, 159 Mich App 441, 444; 407 NW2d 27 (1987). When evaluating whether an individual intended to cause an injury to himself or herself, numerous facts and circumstances can be considered including (1) events leading up to the injury, *Schultz v Auto Owners Ins Co*, 212 Mich App 199, 201-202; 536 NW2d 784 (1995), (2) overt expressions of suicidal intent, *Miller*, 218 Mich App at 223-224, 234, (3) the actor's level of intoxication, *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 19; 684 NW2d 391 (2004), and (4) details surrounding the incident such as whether the actor tried to prevent the injury, *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 630; 499 NW2d 423 (1993), overruled on other grounds *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503; 821 NW2d 117 (2012).

Allstate argues that because this matter was assigned by the Michigan Assigned Claims Plan, the burden rests with plaintiffs to prove that Warczinsky-Keller's injuries were accidental in order to establish their entitlement to benefits. Plaintiffs argue that it was Allstate's burden to establish an exclusion from coverage. Assuming without deciding that Allstate bears the burden of proving that Warczinsky-Keller's injuries were not covered because Warczinsky-Keller intentionally caused his injuries, we conclude that Allstate met its burden.

The only witnesses to the accident were Step and Tate. Step testified at his deposition that he was driving southbound on Dixie Highway, a four-lane road, and Warczinsky-Keller was standing in the right lane of the two lanes that go southbound. Step testified that he swerved, went around him, turned around, and pulled over to the opposite side of the road to call 911. Step told 911 that a man was in the road with his arms and legs spread wide open, wearing all black, and that he was going to get killed. Step watched two cars almost hit Warczinsky-Keller, and testified that Warczinsky-Keller did not budge, move, or even flinch. Step pointed his headlights on Warczinsky-Keller in attempt to illuminate him and warn other drivers, but Tate did not see Warczinsky-Keller until the last second and hit him. Step was still on the phone with 911 and his horrified reaction was recorded. Tate testified at her deposition that she was driving on Dixie Highway when she saw a truck with its lights flashing, so she slowed down, switched lanes, but ultimately hit Warczinsky-Keller, who was standing in the road with his arms up.

On the basis of this evidence, reasonable minds could not differ as to Warczinsky-Keller's subjective intent at the time of the accident. Warczinsky-Keller was standing in the middle of a dark, unlit highway, with his arms outstretched, wearing dark clothing, and did not move even after narrowly avoiding being struck by multiple high-speed vehicles. Further, as the trial court observed, Step turned around after almost hitting Warczinsky-Keller, put his hazards on, and shined his lights on Warczinsky-Keller to alert oncoming traffic. Along with alerting traffic, these actions would have alerted Warczinsky-Keller to the dangers he was facing. Yet, despite Step's actions, Warczinsky-Keller remained in the middle of an unlit four-lane highway at night, and was ultimately hit. This was a "natural, anticipated and expected result of [his] intentional act," and thus, this Court presumes that Warczinsky-Keller intended both the act of standing in the road and the result of being struck and injured. See *Mattson*, 181 Mich App at 424. In short, Allstate presented sufficient evidence to establish that Warczinsky-Keller intended to cause his injuries.

In response to this evidence, Warczinsky-Keller and McLaren failed to set forth specific facts demonstrating that there was a genuine issue of material fact about whether Warczinsky-Keller intended to cause his injuries. Warczinsky-Keller claims that his subjective intent was proven through his testimony that he did not want to injure himself. However, Warczinsky-Keller acknowledged at his deposition that he did not have any personal recollection of what occurred on the date of the accident, and that he did not know why he was standing in the road that night. Based on these admissions, there can be no dispute that Warczinsky-Keller lacked the personal knowledge to testify about what he subjectively intended by standing in the middle of the road on the night of the accident. See MRE 602. Thus, we must look to circumstantial evidence, such as the facts surrounding his injury, to infer his intent. See *Schultz*, 212 Mich App at 202. Based on the undisputed circumstances surrounding the accident—that Warczinsky-Keller was standing in the middle of a dark, unlit highway, with his arms outstretched, wearing dark clothing, and did not move even after narrowly avoiding being struck by multiple high-speed vehicles—a reasonable juror could only conclude that Warczinsky-Keller intended to injure himself.

Warczinsky-Keller argues that other circumstantial evidence tends to establish his lack of intent to injure himself. Warczinsky-Keller argues that (1) because his BAC was .179 and lab records established that he had THC in his system, it was not possible for him to formulate a specific intent to injure himself, (2) his friends' testimony of the events leading up to the motor vehicle accident establish that he was happy and had no reason to injure himself, and (3) the testimony established that Warczinsky-Keller never verbally expressed an intent to injure himself and that he did not have a history of mental health issues or suicidal ideations. Addressing the first point, "[a]n intoxicated person is responsible for his actions, even though he may have voluntarily ingested intoxicating substances." *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 601; 489 NW2d 444 (1992). Thus, an intoxicated individual can form the requisite intent to injure himself, and voluntary intoxication at the time of the accident does "not vitiate or mitigate his intent." *Id.* See also *Schultz*, 212 Mich App at 202.[6] Likewise, while evidence that Warczinsky-Keller was happy before the accident and never had suicidal ideations or verbally expressed an intent to injure himself can be relevant circumstantial evidence that he did not intend to injure himself, this evidence does not give rise to a question of fact in this case given the evidence surrounding the accident itself. Again, viewing the facts in a light most favorable to plaintiffs, the evidence showed that Warczinsky-Keller was standing in a dark unlit roadway, wearing dark clothing with his arms outstretched, and was not even flinching after multiple vehicles almost hit him. Further, Warczinsky-Keller remained in the road despite Step's actions that would have alerted him to the fact that he was in a particularly dangerous situation. No other reasonable conclusion could be drawn from these facts other than that Warczinsky-Keller intended to be hit by a car, i.e., to injure himself.

McLaren's sole argument on appeal is that there was a genuine issue of material fact regarding Warczinsky-Keller's subjective intent to injure himself because no one knows why Warczinsky-Keller was in the roadway, not even himself, and that he may have been in the roadway "for reasons other than intentionally injuring himself." For the reasons explained, however, Allstate presented sufficient evidence to establish that Warczinsky-Keller intended to injure himself, and McLaren's response is nothing more than speculation, which "cannot create a question of fact." *Estate of Trueblood v P&G Apartments, LLC*, 327 Mich App 275, 289; 933 NW2d 732 (2019).

Affirmed.

/s/ Thomas C. Cameron
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien

[6] Further, Warczinsky-Keller does not point to any evidence to support his argument that he could not form an intent to injure himself because of his BAC and the presence of THC in his system. Rather, he merely speculates that he could not form the requisite intent based on the evidence of his BAC and the presence of THC in his system. "Speculation cannot create a question of fact." *Estate of Trueblood v P&G Apartments, LLC,* 327 Mich App 275, 289; 933 NW2d 732 (2019).