STATE OF MICHIGAN

COURT OF APPEALS

MARIO YOUSIF, by next friend SONDRO YOUSIF,

Plaintiff-Appellant,

and

GRACE TRANSPORTATION, INC, UTICA PHYSICAL THERAPY, and JOSEPH MEDICAL SUPPLY,

Intervening Plaintiffs,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 27, 2018

No. 336791
Wayne Circuit Court
LC No. 15-010795-NF

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

PER CURIAM.

Plaintiff Mario Yousif appeals as of right the order of the trial court denying his motion for reconsideration of the trial court's order granting summary disposition to defendant State Farm Mutual Automobile Insurance Company (State Farm). The trial court granted State Farm summary disposition of plaintiff's claim for personal injury protection (PIP) benefits under the no-fault act pursuant to MCR 2.116(C)(10). We affirm.

I. FACTS

The underlying facts of this case are essentially undisputed. On May 5, 2015, plaintiff was a passenger in a vehicle that was involved in an automobile accident. The car in which plaintiff was a passenger was owned and being driven by plaintiff's mother, Dunia Hormuz. Plaintiff was riding in the front passenger seat when another vehicle struck the car on the driver's side. Although a police officer was called, plaintiff did not report any injuries to the officer. Plaintiff later testified during his deposition, however, that when the other vehicle struck his mother's car, he "smacked" his head on the window and "shook back and forth." Plaintiff testified that although he did not tell the officer that he was injured, on the way home he told his mother that he was having pain in his head, neck, and lower back.

Because his mother did not have auto insurance, plaintiff submitted a claim for PIP benefits to the Michigan automobile insurance placement facility (MAIPF), and the claim was thereafter assigned to defendant State Farm through the Michigan Assigned Claims Plan (MACP). During his deposition on March 22, 2016, plaintiff claimed that in the nearly one year since the accident, he had been in unbearable pain, which he rated at nine on a scale of 1 to 10. He testified that he is in pain "most of the day" and that his pain is worsened by sitting, which is only relieved by stretching, but that stretching also makes the pain worse. Plaintiff further testified that the pain is caused by any kind of movement, such as walking. He testified that he is able to walk short distances, but that his mother monitors him while he walks for a couple of blocks. Plaintiff also testified that lying down causes discomfort and tingling. He further testified that he is unable to exercise.

Plaintiff testified that since the accident, he has needed extensive household replacement and attendant-care services. He testified that his mother began providing him assistance the day after the accident and that she cooks his meals, washes his dishes, does his laundry, vacuums, cleans his room, bathes/showers him twice each day, shaves and grooms him, helps him in and out of bed, helps him to the bathroom, and brings his food to his room because he is usually bedridden. His mother also massages his back. Plaintiff testified that his mother provides eight hours of nursing care each day, and also one hour of household replacement services each day. Plaintiff submitted claims for attendant care and household services for every day from May 6, 2015 (the day after the accident), until May 4, 2016.

During the same time period for which plaintiff sought benefits for attendant care and household services, plaintiff regularly posted his activities on Facebook. After the May 5, 2015 car accident in which he ostensibly became disabled and essentially bedridden, plaintiff attended and completed high school, including attending the graduation ceremony in May 2015. His Facebook postings show him at graduation in a cap and gown, standing and posing with family members and classmates. In June and July, 2015, plaintiff posted numerous pictures of himself socializing with friends at restaurants, including a video in which he is able to turn around quickly to take a french fry from someone's plate. In July, 2015, he posted a "selfie" of his abs, noting that he needed to work out and refrain from eating Taco Bell. On August 8, 2015, plaintiff documented going to a Detroit Tigers game at Comerica Park.

Plaintiff also appears to have traveled during this time period. In August 2015, plaintiff and his brother drove to Tennessee; plaintiff posted several pictures of rugged terrain in the

Smokey Mountains through which he was traveling, apparently on foot. He also posted a picture of a black bear taken from a roof or balcony. While vacationing in Tennessee, he continued to claim attendant-care and household-replacement benefits for nursing care and daily housework. Similarly, his Facebook posts show that in March 2016, he traveled by car to Las Vegas and posted comments in which he claimed to be enjoying Vegas night life, but nonetheless continued to claim his usual nursing and attendant care benefits for those days.

In light of plaintiff's numerous Facebook posts depicting a life far from disabled or even sedentary, State Farm moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff had made false statements regarding his application for benefits and that the false statements constituted fraudulent acts under MCL 500.3173a. Plaintiff in turn argued that whether his statements were false or fraudulent was a matter of credibility, and thus a question of fact for the jury. The trial court disagreed, granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), and thereafter denied plaintiff's motion for reconsideration. Plaintiff now appeals.

II. DISCUSSION

A. SUMMARY DISPOSITION

Plaintiff contends that the trial court erred in granting defendant summary disposition pursuant to MCR 2.116(C)(10). Plaintiff argues that his actions do not constitute fraudulent acts and that the determination was one of fact not appropriate for summary disposition. We disagree.

This Court reviews de novo the trial court's grant or denial of summary disposition. *Graham v Foster*, 500 Mich 23, 28; 893 NW2d 319 (2017). This Court also reviews questions of law de novo. *Szpak v Inyang*, 290 Mich App 711, 713; 803 NW2d 904 (2010). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When considering a motion for summary disposition pursuant to MCR 2.116(C)(10), this Court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Green v AP Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). A motion for summary disposition under MCR 2.116(C)(10) is properly granted when, except as to damages, there is no genuine issue concerning any material fact, and the moving party is entitled to judgment as a matter of law. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the nonmoving party, the record leaves open an issue upon which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). Thus, to prevail on this basis in a motion for summary disposition, the insurer must demonstrate that there is no question of fact but that fraud occurred, demonstrating that no rational trier of fact could reach a conclusion other than that the insured engaged in fraud. See *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 424; 864 NW2d 609 (2014).

In this case, plaintiff submitted a claim to the MAIPF, and plaintiff's claim thereafter was assigned to defendant State Farm through the MACP. MCL 500.3173a applies to claims submitted under the MAIPF and provides as follows:

> (1) The Michigan automobile insurance placement facility shall make an initial determination of a claimant's eligibility for benefits under the assigned claims plan and shall deny an obviously ineligible claim. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.
>
> (2) A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

Thus, a person who commits a fraudulent insurance act under this statute is ineligible to receive insurance benefits under the assigned claims plan. MCL 500.3173a(2). This Court has recently held that MCL 500.3173a applies not only when a false statement is made directly to the MAIPF, but also when the false statement is made to an insurer to whom a claim submitted to MAIPF has been assigned by MACP. *Candler v Farm Bureau Mut Ins Co of Michigan*, ___ Mich App ___, ___; ___ NW2d ___ (2017); slip op at 4. That is, the statute does not require that the false statement be made to a particular recipient to qualify as a "fraudulent insurance act" under the statute, but only that the statement be made "as part of or in support of a claim to the [MAIPF]." *Id*. at ___; slip op at 3. Therefore, if plaintiff in this case made a false statement, whether directly to MAIPF or to State Farm, that rises to the level of a fraudulent insurance act, he is ineligible to receive insurance benefits under the assigned claims plan. *Id*.

Under MCL 500.3173a, a person commits a fraudulent insurance act when he "(1) presents or causes to be presented an oral or written statement, (2) which is part of or in support of a claim for no-fault benefits, (3) where the claim for benefits was submitted to the MAIPF, . . . (4) the person must have known that the statement contained false information, and (5) the statement concerned a fact or thing material to the claim." *Candler*, ___ Mich App at ___; slip op at 3. In *Candler*, the plaintiff was struck by a hit-and-run driver. The plaintiff submitted a claim for PIP benefits through MACP, and the claim was assigned to the defendant insurance company. The plaintiff then submitted documentation to the defendant insurer in support of the claim for PIP benefits. Among the documentation were attendant-care or replacement-care services calendars for three months of care, purportedly signed by the plaintiff's brother who ostensibly provided the care. It later was demonstrated that the plaintiff's brother had not provided these services and that the plaintiff had signed his brother's name to the service calendars. The defendant insurer sought summary disposition of the plaintiff's claim under MCL 500.3173a, arguing that the plaintiff's false statements constituted a fraudulent act under the statute, rendering plaintiff ineligible for PIP benefits. This Court reversed the trial court's denial of summary disposition for the defendant insurer, concluding that the false statements constituted

a fraudulent act under MCL 500.3173a and thereby precluded the plaintiff's eligibility for benefits. *Candler*, ___ Mich App at ___; slip op at 4.

An analogous situation occurs when a plaintiff seeking PIP benefits under a policy of insurance containing an exclusion for fraud makes a false statement to the defendant insurer. In *Bahri*, the plaintiff sought PIP and uninsured motorist benefits under a no-fault policy that contained a general fraud exclusion that "[we] do not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy." In support of her claim, the plaintiff submitted statements for household services, claiming that multiple replacement services were provided to her daily for approximately five months. But surveillance video during this time showed the plaintiff bending, lifting, driving, and running errands, and therefore able to do the activities for which she was seeking replacement services. The trial court granted summary disposition in favor of the defendant, and this Court affirmed, stating "defendant produced surveillance evidence depicting plaintiff performing activities inconsistent with her claimed limitations" on the dates for which she specifically had claimed that she needed help to perform tasks requiring those activities. *Id*. at 425. This Court concluded that "[t]his evidence belies plaintiff's assertion that she required replacement services, and it directly and specifically contradicts representations made in the replacement services statements. Reasonable minds could not differ in light of this clear evidence that plaintiff made fraudulent representations for purposes of recovering PIP benefits." *Id*. at 426.

In this case, plaintiff submitted a claim to the MAIPF, which then was assigned to defendant State Farm. Plaintiff then made statements to State Farm regarding the extent of his disability and pain and sought payment for attendant care and household replacement services, ostensibly provided by his mother, from May 6, 2015, to May 4, 2016. During this same time period, plaintiff also documented his activities on social media that belied his claims of disability and incessant pain. His social media documentation shows evidence of an active, pain-free young man socializing, discussing exercising, and traveling. Moreover, on some of the dates for which defendant claimed to have received eight hours of nursing care and one hour of housekeeping, he was actually in Tennessee, apparently on a hiking or walking trip (given his posted photographs of rugged terrain), and vacationing in Las Vegas. The statements plaintiff made concerned facts or things material to his claim.

Given the discrepancy between plaintiff's statements to State Farm and his actions depicted on social media, plaintiff must have known that his statements were false. Comparing the facts of this case to the facts found sufficient to demonstrate fraud, and therefore to support summary disposition, in *Bahri* and *Candler*, State Farm adequately demonstrated that plaintiff committed a fraudulent insurance act by making a false statement, whether directly to MAIPF or to State Farm. The fraudulent insurance act renders plaintiff ineligible to receive insurance benefits under the assigned claims plan. MCL 500.3173a; *Candler*.

Plaintiff argues that the trial court incorrectly decided that plaintiff had perpetrated fraud because the question was one of credibility rather than fraud, and therefore was a question of fact for the jury to decide. Although whether a plaintiff has committed fraud may be a question of fact for the jury, when the defendant demonstrates that no rational trier of fact could reach a conclusion other than that the plaintiff engaged in fraud, summary disposition is appropriate.

See *Candler* (summary disposition was appropriate where the plaintiff sought payment for attendant care and household services that the plaintiff knew he did not receive), and *Bahri* (summary disposition appropriate where video evidence showed the plaintiff performing the very actions that she claimed were impossible for her to perform and for which she had sought replacement services).

Plaintiff also contends that the trial court misinterpreted *Bahri*. What plaintiff actually argues, however, is that the facts of *Bahri* are distinguishable from the facts of this case. Plaintiff argues that the photographic and video evidence in this case merely shows plaintiff sitting and standing, and that this is not inconsistent with his claims. Plaintiff's claim, however, is that he daily is in extreme pain (nine on a scale of 1 to 10) to the extent that he is often bedridden and must often take his meals in his room. He has asserted that his pain is so extreme and has disabled him to such an extent that he needs eight hours of nursing care each day, being unable to walk to the bathroom, or to shower or to groom himself unassisted. He also has asserted that he needs one hour of housekeeping services each day because he cannot cook, wash dishes, do laundry, empty trash, vacuum, or tidy his room. The pictures, text, and video posted by plaintiff on social media, however, demonstrate that plaintiff is not confined to his bedroom, but rather is out with friends at restaurants and attended a Tigers' baseball game, for instance. In fact, plaintiff was not even at home on some of the days for which he is seeking payment for daily nursing and housekeeping services, but was instead traversing rugged terrain in Tennessee or pursuing night life in Las Vegas. The facts of this case therefore are analogous to, and in fact more egregious than, those of *Bahri*.[1]

Plaintiff also argues that the trial court ignored his affidavit, in which he asserted that the photographic and video evidence does not show plaintiff taking actions inconsistent with his claims. The trial court's ruling from the bench on the motion for summary disposition, however, does not indicate that the trial court ignored the affidavit. Rather, the trial court acknowledged that plaintiff's affidavit asserted that the allegation of fraud created a question of fact, and then rejected that argument. The trial court stated with regard to the affidavit:

> Plaintiff's position, however, is that . . . plaintiff's affidavit creates a question of fact for the jury, he argues, and this is a credibility issue.
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> * * *
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> At the time of his deposition [plaintiff] had limited range of motion of his neck, he continued to experience the same amount of pain at the time of his dep, and it

[1] Plaintiff also asserts that the trial court misinterpreted *Thomas v Frankenmuth Mut Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued July 12, 2016 (Docket No. 326744). Plaintiff merely makes this statement, but does not explain his argument or cite authority to support it. This argument is therefore abandoned on appeal. *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 415-416; 766 NW2d 874 (2009). In addition, because *Thomas* is an unpublished opinion, the trial court was not obligated to apply it.

has not gotten better. He has pain most of the day caused by movement and walking, stretching, has tingling feelings through the back and the legs, through his toes and fingers, and that his mother is still doing all the household replacement chores for him. She also does attendant care, bathing, helping him in and out of bed and grooming him, and toiletry. The mother brings food to him. He spends most of his days in bed. The mother walks him to the corner because she's concerned about him falling. And [if] she doesn't walk with him she face times with him while he walks. She spends eight hours a day helping him. He can't do any physical activities. . . .

However, in contrast to all that testimony he has a Facebook. And on his Facebook he has two DVD's that involve movement. One DVD is a Facebook post from June 16th of 2015 showing him dancing, and pushing someone down a flight of stairs. The other DVD on July 5th of 2015 shows him at a restaurant. Defendant has attached the attendant care household service logs on this date, stating that plaintiff needed help with his showering, supervised massage, dressing/undressing, toiletry, exercise, hygiene, medication, lunch, dinner, blah, blah, blah, blah. Washing dishes, etcetera, etcetera. The service log for July 5th of 2015 indicated pretty much the same thing, even though he was at a restaurant.

So okay, the other Facebook post showed that he was at a wedding on June 13th. There are lots of Facebook photos and posts from that wedding date. At a restaurant he was at June 21st , 2015, that's the day [in] the log his mother said he needed [help] with breakfast, lunch and dinner. On July 6th of 2015 on his Facebook post he states he's got to not eat Taco Bell for the next two weeks. On July 10th of 2015 he says his party is tomorrow. On July 11th of 2015 his service log shows he needed help with everything. At a Tigers game on August 4th of 2015[,] it shows him at a Tigers game on that date. He traveled to Tennessee by car in August of 2015. His Facebook shows him shopping on December 22nd of 2015. There are many selfies of him in bathrooms, I'm not sure why. He went to Las Vegas by car in March of 2016. On March 9th of 2016 a Facebook photo shows him smiling and standing before the Palms Hotel. On that date for the service log his mother claimed to have helped him with showering, grooming, supervised massage, dressing, toiletry, exercise, etcetera, etcetera.

The Las Vegas trip was shortly prior to plaintiff's deposition, at which he testified that he spent most of his time in bed and couldn't walk. In his affidavit he states that his care giver was with him on the trip and that the posts don't show him doing anything inconsistent with his deposition testimony.

So for someone to be in extreme pain every day and can't do anything, he did look pretty happy in those Facebook photos. His treating doctors both believe he's capable of taking care of himself and not in need of assistance, . . . One treating doctor strongly hints at fraud, denying his signature on the disability slip from his office. It appears that as of July of 2015 plaintiff is working, according to his application to trade school.

> Going with the Facebook posts and corresponding service logs, the March 9th, 2015 photo of plaintiff in Las Vegas, where his care giver was emptying trash cans, vacuuming or sweeping, washing dishes, even claiming all these things for him when he was in Vegas, so there is no doubt in this court's judgment that this is a clear example of fraud as discussed in [*Barhi*], no question.
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> This in fact is not a credibility issue, it's a fraud issue, and I'm granting your request.

Thus, the trial court did not "ignore" plaintiff's affidavit; the trial court rejected plaintiff's characterization of the facts of this case as a question of credibility. Moreover, in light of the overwhelming evidence, we conclude that the trial court did not err in determining that defendant was entitled to summary disposition.

B. ADDITIONAL ALLEGATIONS OF ERROR

Plaintiff further argues that in granting defendant summary disposition, the trial court made a series of additional errors warranting reversal, which he also raised before the trial court in his motion for reconsideration. Plaintiff argues that the trial court erred by (1) not allowing plaintiff's counsel to speak during the hearing on the motion, (2) reading from a prepared opinion, (3) ignoring the doctor disability certificates, (4) showing bias toward defendant because it was a MACP case, (5) showing obvious dislike for plaintiff, (6) ignoring the case evaluation award, (7) not identifying State Farm as the perpetrator of fraud, (8) denying plaintiff's motion for reconsideration, and by (9) relying on State Farm's misrepresentations. None of these assertions of error has merit.

Although these issues were raised before the trial court in plaintiff's motion for reconsideration, and are therefore preserved, none of plaintiff's assertions of error are supported by citation to authority, and most are not explained by argument. These issues therefore are abandoned on appeal. *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 415-416; 766 NW2d 874 (2009). Moreover, our review of the record demonstrates that plaintiff's contentions are also not supported by the facts.

Affirmed.

/s/ Michael J. Riordan
/s/ Mark T. Boonstra
/s/ Michael F. Gadola