

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RORY SPENCE,

Plaintiff-Appellant,

v

LOUIS SALAK,

Defendant-Appellee.

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UNPUBLISHED

December 23, 2024

8:52 AM

No. 367513

Oakland Circuit Court

LC No. 2022-196862-NI

ON RECONSIDERATION

Before: YOUNG, P.J., and M. J. KELLY and FEENEY, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendant under MCR 2.116(C)(10) in this third-party action under the no-fault act, MCL 500.3101 *et seq.* On reconsideration,<sup>1</sup> we reverse and remand for further proceedings.

I. BACKGROUND

This case involves a November 27, 2021 motor-vehicle collision on Woodward Avenue, in Berkley, Michigan. Plaintiff was 24 years old at the time and worked as a manager at a mortgage company. His hobbies included working out with weights. Little is known about plaintiff’s preaccident medical history, but plaintiff previously treated with a chiropractor for back pain, and he had a previous issue with his sacroiliac joint leading him to consult a pain-management doctor.

The collision occurred when plaintiff entered a left-turn lane on Woodward, just south of 12 Mile Road, and slowed down behind another vehicle. Defendant, who was driving a Toyota 4Runner at about 30 to 40 miles per hour, entered the turn lane behind plaintiff and struck the rear

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<sup>1</sup> *Spence v Salak*, unpublished order of the Court of Appeals, entered September 10, 2024 (Docket No. 367513).

bumper of plaintiff's vehicle. This caused plaintiff's vehicle to hit the rear bumper of the vehicle in front of him. The air bags in plaintiff's vehicle deployed. Plaintiff's vehicle sustained "[d]isabling [d]amage," and was towed. Defendant left the scene of the accident. Authorities later cited him for the failure to report the accident and the failure to maintain an assured clear distance. Plaintiff did not seek medical attention that day, and no ambulance was called to the scene.

The next day, plaintiff went to an urgent-care facility complaining of pain. The corresponding treatment report states, "24 yo healthy male with no [prior medical history] who presents for pain that began this morning after MVA x 1 day ago." Plaintiff complained of pain in his neck radiating into his third and fourth fingertips in both arms. He also had pain in his lower back, right hip, right knee, and right ankle. Plaintiff stated that the pain that radiated into his hands was acute and had a "sudden" onset. The treatment record provides, "[M]echanism of injury includes motor vehicle accident." Plaintiff's physical examination was mostly normal, and the x-rays did not reveal any acute findings. However, plaintiff experienced pain when bending and rotating his neck, and his right hip was slightly tender to the touch. Plaintiff was diagnosed with "MVA (motor vehicle accident)," "[c]ervical strain," and "[l]umbar strain." He was prescribed Ibuprofen and a muscle relaxer. No "red flag signs" were found on the examination.

In early December 2021, plaintiff went to his dentist complaining of left-jaw clicking, pain, and some shifting in his teeth alignment. An examination showed "occlusion as normal" and a normal range of motion. In early January 2022, plaintiff underwent a nerve-conduction study, which was also normal.

Then, because plaintiff continued to experience pain and stiffness, plaintiff's primary doctor referred him to Team Rehabilitation, where he attended physical therapy from January 2022 to July 2022. Plaintiff's case was noted as being "Auto Related." Plaintiff complained of lower-back pain, neck stiffness, nerve issues in his hands, and overall tightness in his body. Plaintiff reported having constant pain in his neck and lower back since the accident, but his pain was minimal. He reported that he was "limited in some daily tasks" and had not returned to a normal exercise routine. However, he could participate in light yoga. Plaintiff, who had a sedentary job, experienced pain while sitting and had to shift his position frequently because of the pain. Plaintiff also could not sleep through the night without pain and woke up two or three times per night. His grip strength was reduced in his right hand ("80, 85, 85"), as compared with his left hand ("105, 95, 105"). On examination, the physical therapist saw that plaintiff's right-side pelvis tilted forward when compared with his left side, and his right toe pointed out while his left toe pointed inward. Plaintiff was prescribed physical therapy three times per week.

There is no doubt that plaintiff's condition improved with physical therapy. By his fourth physical-therapy session, plaintiff reported less tingling in his hands, and he was able to participate in yoga and "gentle weight lifting exercises." He continued to experience tightness and stiffness in his neck, as well as a dull pain in his lower back. At the time, plaintiff was studying for the admission test to become a law student, which caused his neck and back to hurt from sitting for long periods. By May 2022, plaintiff was feeling better overall and had returned to many of his daily activities and workouts at the gym. He was participating in yoga and light exercise, and was able to sit at his desk for at least four hours at a time. However, he still experienced pain near the end of his range-of-motion exercise. In June, plaintiff was able to return to his normal gym routine, as well as the rock-climbing gym.

In May 2022, plaintiff visited a pain-management doctor. Plaintiff complained of chronic neck pain, back pain, right ankle pain, and bilateral hip discomfort which he said started immediately after the motor-vehicle accident. He stated that the physical therapy provides temporary relief. While performing his examination, the pain-management doctor found “slight tenderness” in plaintiff’s cervical spine. Plaintiff’s sacroiliac joints were also “[m]inimally tender.” The pain-management doctor concluded that plaintiff had “[c]hronic myalgias of the cervical, thoracic, and lumbar paraspinals,” “[c]hronic low back pain,” and “[c]hronic right ankle pain after an accident.” He noted:

I had a lengthy discussion with Mr. Spence about his condition today. It is puzzling to me that he hasn’t gotten better from the accident because it seems to be mostly myofascial problems which [i]n somebody his age should respond favorably to therapy and resolve by now but it has not.

Plaintiff underwent MRIs of his cervical and lumbar spine in May 2022. Plaintiff’s pain-management doctor stated that the MRIs showed “some uncovertebral joint arthropathy at C4-5 causing mild left foraminal stenosis,” as well as “L3-4 disc protrusion with mild central canal stenosis,” and “L3-4 through L5-S1 bilateral mild foraminal stenosis at L4-5 facet arthropathy.” He ordered an epidural injection for plaintiff’s lower back, and suggested plaintiff may be a candidate for a medial nerve branch block.

Plaintiff also received massage-therapy treatment in May 2022 and June 2022. The massage therapist noted tightness in all areas that were massaged, including plaintiff’s hips, back, neck, shoulders, and chest. Plaintiff also treated with a chiropractor, who diagnosed plaintiff with whiplash. He received chiropractic treatment from 2021 through at least mid-2023.

Plaintiff sued defendant, alleging that as a result of defendant’s negligent operation of his motor vehicle, plaintiff suffered a serious impairment to his neck, back, hip, right knee, ankle, and jaw, entitling him to third-party no-fault benefits. The parties engaged in some written discovery, but did not depose any witnesses. Nor did defendant send plaintiff for any medical examinations. Instead, defendant moved for summary disposition under MCR 2.116(C)(10), arguing that no genuine issue of material fact existed on the issues of proximate causation and whether plaintiff suffered a threshold injury. Plaintiff responded that his medical records established a factual question on whether he suffered a serious impairment and whether his injuries were proximately caused by the accident. With his response brief, plaintiff submitted an affidavit detailing how the accident affected his ability to lead his normal life.

In lieu of hearing the motion, the court entered a written opinion and order granting summary disposition in defendant’s favor. The court ruled that no genuine issue of material fact existed on whether plaintiff suffered an objectively manifested impairment because plaintiff failed to demonstrate that the accident caused his injuries. The court explained: “Specifically, the Court finds the objective tests—x-rays and MRIs—do not show any fractures or traumatic injuries and only demonstrate degenerative changes to the cervical and lumbar spine. There is no doctor’s note or medical record opining the Accident caused Plaintiff’s alleged impairment. Summary disposition is appropriate.” This appeal followed.

## II. ANALYSIS

Plaintiff argues that the trial court erred by granting summary disposition in defendant's favor because factual disputes existed on whether he suffered a serious impairment of body function and whether the accident caused his injuries. We agree with both arguments.

We review de novo the trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). An MCR 2.116(C)(10) motion for summary disposition tests the factual sufficiency of the plaintiff's claim. *Id.* at 160. Summary disposition is proper when, after considering all evidence in the light most favorable to the party opposing the motion, the court determines there is no genuine issue of material fact. *Id.* "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id.* (citation omitted). "A party seeking summary disposition under this rule can satisfy its burden by . . . demonstrat[ing] to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Patel v FisherBroyles, LLP*, 344 Mich App 264, 271; 1 NW3d 308 (2022) (quotation marks and citation omitted; alteration in original). If the evidence before the court is conflicting, then the trial court must deny the motion for summary disposition in lieu of making any findings of fact. *Patrick v Turkelson*, 322 Mich App 595, 605-606; 913 NW2d 369 (2018). We review any questions of law de novo. See *Rakestraw v Gen Dynamics Land Sys, Inc*, 469 Mich 220, 224; 666 NW2d 199 (2003).

#### A. SERIOUS IMPAIRMENT

MCL 500.3135(1) of the no-fault act provides, "A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." The parties dispute whether plaintiff suffered a serious impairment of body function. The phrase "serious impairment of body function" is statutorily defined as including the following three elements:

(a) It is objectively manifested, meaning it is observable or perceivable from actual symptoms or conditions by someone other than the injured person.

(b) It is an impairment of an important body function, which is a body function of great value, significance, or consequence to the injured person.

(c) It affects the injured person's general ability to lead his or her normal life, meaning it has had an influence on some of the person's capacity to live in his or her normal manner of living. Although temporal considerations may be relevant, there is no temporal requirement for how long an impairment must last. This examination is inherently fact and circumstance specific to each injured person, must be conducted on a case-by-case basis, and requires comparison of the injured person's life before and after the incident. [MCL 500.3135(5)(a)-(c).]

MCL 500.3135(2) adds that the question whether a plaintiff suffered a serious impairment is a question of law for the court if no factual dispute exists regarding the nature and extent of the plaintiff's injuries, or if a factual dispute exists, but it is not material. As our Supreme Court has concluded, "The serious impairment analysis is inherently fact- and circumstance-specific and

must be conducted on a case-by-case basis.” *McCormick v Carrier*, 487 Mich 180, 215; 795 NW2d 517 (2010).

Before addressing the merits, we first address plaintiff’s argument that defendant failed to meet his burden of production under MCR 2.116(G)(3) and (4) because his motion for summary disposition did not put forth documentary evidence in support of his arguments. Plaintiff asserts that defendant’s “unsupported extrapolations” from plaintiff’s medical records do not meet this requirement. We conclude that defendant’s motion was procedurally proper because the summary-disposition standard allows a party to meet its burden by “demonstrat[ing] to the court that the nonmoving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim.” See *Patel*, 344 Mich App at 271. Defendant’s motion for summary disposition attempted to demonstrate to the court that plaintiff’s evidence was insufficient to establish the elements of his claim. Defendant attached a number of exhibits to his motion. Therefore, the motion met the procedural requirements of MCR 2.116(G)(3) and (4).

### 1. OBJECTIVELY MANIFESTED IMPAIRMENT

Turning to the substance of the motion, in *McCormick*, 487 Mich at 196, our Supreme Court defined an objectively manifested impairment as one that “is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function,” or, in other words, is “one observable or perceivable from actual symptoms or conditions.” The Court further clarified that whether an impairment is objectively manifested requires that the focus “ ‘is not on the injuries themselves, but how the injuries affected a particular body function.’ ” *Id.* at 197 (citation omitted). The Court distinguished an injury, which it defined as “the actual damage or wound,” from an impairment, which “generally relates to the effect of that damage.” *Id.* Impairment means “ ‘weakened, diminished, or damaged,’ ” or “ ‘functioning poorly or inadequately.’ ” *Id.* (citation omitted). The focus of the test is on whether the impairment, rather than the injury itself, is objectively manifested. *Id.* This standard requires the plaintiff to introduce evidence to show a physical basis for his subjective complaints, and that showing “generally requires medical testimony.” *Id.* at 198. However, medical documentation is not *always* required. *Id.*

Examining the record in the light most favorable to plaintiff, the medical records, including those from plaintiff’s urgent-care visit, his physical therapy sessions, his massage-therapy sessions, his pain-management doctor, and his chiropractor, supported that plaintiff suffered observable and perceivable impairments. To start, the day after the accident, plaintiff went to an urgent-care facility complaining of pain. For the most part, plaintiff had a normal examination with no “red flag” signs. But plaintiff did experience pain when bending and rotating his neck, and his right hip was slightly tender to the touch. Thus, his impairments to his neck and hip were observable and perceivable.

Similarly, plaintiff’s physical-therapy records also supported the existence of an objectively manifested impairment. The physical therapist who examined plaintiff saw that plaintiff’s right-side pelvis tilted forward, and his right toe pointed out while his left toe pointed inward. The next month, she examined plaintiff again and saw the same physical problems she noted during the first visit, including that plaintiff’s right-side pelvis was tilting forward. He had limited grip strength in his right hand when compared with his left, and limited cervical range of

motion. See *id.* at 218 (noting that the plaintiff had demonstrated an objectively manifested impairment when he suffered a broken ankle that led to a reduced range of motion).

Plaintiff's impairments did not disappear with physical therapy, and he consulted a pain-management doctor and a massage therapist. He also continued to treat with his chiropractor. The corresponding records all supported that plaintiff's impairment was objectively manifested. When he first examined plaintiff, the pain-management doctor found "slight tenderness" in plaintiff's cervical spine. Plaintiff's sacroiliac joints were also "[m]inimally tender." The massage therapist found palpable tightness in all areas that were massaged. The chiropractor diagnosed plaintiff with whiplash shortly after the accident. She later found plaintiff had decreased range of motion in his shoulder. Finally, the MRI of plaintiff's back demonstrated a disc bulge at the L3-L4 level, for which plaintiff's pain-management doctor recommended an epidural and a possible nerve block. These records all supported that plaintiff suffered impairments that were observable or perceivable from actual symptoms or conditions and were consistent with plaintiff's complaints of pain.

Defendant argues that plaintiff's condition improved with physical therapy, and that his nerve-conduction test and x-rays were normal. Defendant also notes that the pain-management doctor expressed some frustration and uncertainty about why plaintiff's pain had continued. The fact that plaintiff's condition improved over time and through several months of physical-therapy sessions does not negate the fact that plaintiff's condition was observable and perceivable, however. Likewise, the fact that plaintiff's pain-management doctor could not explain why his condition had not improved also does not show that plaintiff had no objectively manifested impairment. The fact that some of the medical records were normal merely demonstrates that a factual dispute exists on this issue. Therefore, the trial court erred by granting summary disposition in defendant's favor.

## 2. IMPORTANT BODY FUNCTION

The Michigan Supreme Court has explained that this element of serious impairment "is an inherently subjective inquiry that must be decided on a case-by-case basis, because what may seem to be a trivial body function for most people may be subjectively important to some, depending on the relationship of that function to the person's life." *Id.* at 199. The plaintiff's testimony is enough to satisfy this prong. *Id.* at 218. We note the trial court did not address this prong of the analysis because it concluded that plaintiff did not suffer an objectively manifested impairment.

We conclude that plaintiff's affidavit supported this element. Plaintiff stated, in relevant part, that the accident impacted his ability to work out with weights. Plaintiff gained 30 pounds after the accident, which he attributed to his impaired workout ability. He stated that his ability to work at his job was also impaired. Plaintiff now uses an orthopedic pillow when sitting at a desk, and he suffers persistent back pain and stiffness requiring him to take frequent breaks. He also missed work for physical therapy and chiropractic appointments. Plaintiff explained that his sleep was also impaired, and he often woke up with pain during the night. Plaintiff also has difficulty grasping objects, typing on his keyboard, and walking. Plaintiff noted that exercise was important to his well-being, and that he valued his production at work. He explained, "All of those affected activities were important to me. Being prevented from participating in them, or having my ability to participate in them impaired, was a significant loss for me." This testimony, viewed under the

standard set forth in *McCormick*, supported that plaintiff's impairments were to body functions that were of "great value, significance, or consequence" to him. See MCL 500.3135(5)(b).

### 3. GENERAL ABILITY TO LEAD NORMAL LIFE

On this issue, the *McCormick* Court held that affecting the person's general ability to lead their normal life means "to have an influence on some of the person's capacity to live in his or her normal manner of living." *McCormick*, 487 Mich at 202. The Court explained that this analysis "requires a subjective, person- and fact-specific inquiry that must be decided on a case-by-case basis," and "necessarily requires a comparison of the plaintiff's life before and after the incident." *Id.* The plaintiff's life must be affected, but does not need to be destroyed. *Id.* Also, "there is no quantitative minimum as to the percentage of a person's normal manner of living that must be affected." *Id.* at 203. Finally, "the statute does not create an express temporal requirement" in terms of how long the impairment must affect the person's general ability to lead their normal life. *Id.*

A factual question exists on whether the impairments affected plaintiff's general ability to lead his normal life. The effect of plaintiff's impairments is documented in his medical records. The day after the incident, plaintiff went to an urgent-care facility complaining of pain in his neck radiating into his third and fourth fingertips in both arms. He also stated he had pain in his lower back, right hip, right knee, and right ankle. Plaintiff then underwent physical therapy for about six months. Plaintiff indicated during his first session that he was "limited in some daily tasks" and had not returned to a normal exercise routine, although he could participate in light yoga. Plaintiff worked a sedentary job, and he experienced pain while sitting and had to shift his position frequently because of the pain. Plaintiff could not sleep throughout the night without pain. He could not run or jump for exercise. There is no question that plaintiff's condition improved over time. By May 2022, plaintiff was feeling better overall and had returned to many of his daily activities and workouts at the gym. Nevertheless, plaintiff's pain continued, and he treated with a pain-management doctor. Plaintiff's medical records showed that plaintiff's impairments continued to impact his general ability to lead his normal life for months after the accident.

In his affidavit, plaintiff added that, even 19 months after the accident, the collision continued to affect his ability to work out, and he could not lift as much weight and for as many repetitions as he could before the crash. Plaintiff gained about 30 pounds during this time, which he attributed to the limitations in his ability to work out. He also had to warm up for longer periods before his workouts. Plaintiff's ability to work was also limited, and he had persistent back pain requiring him to take frequent breaks. The pain also impacted plaintiff's ability to read from his computer screen. Plaintiff's sleep was significantly impaired. Plaintiff also had difficulty opening jars and gripping objects, and he had difficulty walking in the morning. Finally, we note that the fact that plaintiff's physicians did not place specific limitations on his ability to lead his normal life is not dispositive in this analysis.

There is no doubt that the accident did not destroy plaintiff's entire life. But his life did not have to be permanently destroyed for the impairment to have affected plaintiff's general ability to lead his normal life. The issue whether plaintiff's impairment lasted long enough to have affected his general ability to lead his normal life is a question for the trier of fact considering that plaintiff's impairments continued to affect his life for at least 19 months, and the impairment does

not need to be permanent. See MCL 500.3135(5)(c). For all these reasons, the trial court erroneously granted summary disposition in defendant's favor on the issue whether plaintiff suffered a threshold injury.

## B. PROXIMATE CAUSATION

The second inquiry is whether a question of fact existed on causation. We first address whether this issue was properly before the trial court. As plaintiff notes in his brief, while the trial court did not address proximate causation directly, the trial court intermingled the issue of proximate causation with the issue of serious impairment. "Reply briefs must be confined to rebuttal, and a party may not raise new or additional arguments in its reply brief." *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 174; 744 NW2d 184 (2007). See also MCR 2.116(G)(1)(a)(iii) ("Reply briefs must be confined to rebuttal of the arguments in the nonmoving party or parties' response brief and must be limited to 5 pages."). In this case, defendant mentioned vaguely the issue of proximate causation in his motion for summary disposition when he stated, in bold print, "There are no objective findings of injuries or impairments that were caused by the motor vehicle accident." But defendant's statement was in the context of arguing that plaintiff did not suffer a serious impairment. Defendant did not flesh out his causation argument further until his reply brief. Defendant's brief reference to causation in his motion for summary disposition was not sufficient to raise the argument in the motion. The issue was first raised in the reply brief. Therefore, the trial court erred by considering causation.

Regardless, even if the issue were properly before the trial court, we conclude that plaintiff presented evidence from which the trier of fact may reasonably infer a logical sequence of cause and effect between the accident and plaintiff's persistent neck, back, hip, and ankle pain. Proximate causation is a necessary element in a negligence claim. *Patrick*, 322 Mich App at 616. In general, the issue of causation is reserved for the trier of fact unless there exists no genuine issue of material fact. *Id.* " 'To establish proximate cause, the plaintiff must prove the existence of both cause in fact and legal cause.' " *Id.* (citation omitted). The issue here is one of factual causation. "The cause in fact element generally requires showing that 'but for' the defendant's actions, the plaintiff's injury would not have occurred." *Craig ex rel Craig v Oakwood Hosp*, 471 Mich 67, 86-87; 684 NW2d 296 (2004) (quotation marks and citation omitted). This element "requires the plaintiff to 'present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred.' " *Patrick*, 322 Mich App at 617 (citation omitted). "Regardless of the preexisting condition, recovery is allowed if the trauma caused by the accident triggered symptoms from that condition." *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000).

A causation theory must be based on the facts in evidence. *Craig*, 471 Mich at 87. That evidence may be "either direct evidence or indirect and circumstantial evidence." *Shaw v Ecorse*, 283 Mich App 1, 14; 770 NW2d 31 (2009). The plaintiff must "se[t] forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." *Craig*, 471 Mich at 87 (quotation marks and citation omitted). The evidence does not need to negate all other potential causes of the injury, but the evidence must "exclude other reasonable hypotheses with a fair amount of certainty." *Id.* at 87-88 (quotation marks and citation omitted). "While a plaintiff need not prove that an act or omission was the *sole* catalyst for his injuries, he must introduce evidence permitting the jury to conclude that the act or omission was *a* cause." *Id.* at 87. But while the

plaintiff may establish causation through reasonable inferences, the plaintiff cannot rely on mere speculation and conjecture. *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994). “Rather, the plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant’s conduct, the plaintiff’s injuries would not have occurred.” *Id.*

Plaintiff’s car sustained disabling damage during the accident, and his air bags deployed. Although plaintiff did not feel the effects of the accident that day, he went to urgent care the next day complaining of neck, back, hip, and ankle pain, which had started that day. The record states that plaintiff “presented with MVA with neck pain,” and that the mechanism of the injury included “motor vehicle accident.” Plaintiff reported acute and sudden pain in his neck, radiating into his arms, as well as ankle pain, right hip pain, back pain, and right knee pain that was made worse with movement. And while most of the examination, including the x-rays, was normal, it was noted that plaintiff experienced pain when bending and rotating his neck, and his right hip was slightly tender. Plaintiff also told his chiropractor that he was experiencing more tightness in his neck and back following the accident, and she diagnosed him with whiplash. Our Supreme Court has long recognized the relationship between whiplash injuries and rear-end motor-vehicle accidents. See *Routsaw v McClain*, 365 Mich 167, 169; 112 NW2d 123 (1961) (“Whiplash injuries are more and more prevalent as rear end automotive collisions mount daily in number.”).

When plaintiff began physical therapy in January 2022, his physical therapist noted in her report that plaintiff’s situation was “Auto Related.” While it is true that plaintiff’s self-report was that the pain began with the motor-vehicle accident, plaintiff explained that his belief was based on his consistent pain since the accident. He reported that he was “limited in some daily tasks” and had not returned to a normal exercise routine. He also experienced pain while sitting and had to shift his position frequently because of the pain. Also, plaintiff could not sleep throughout the night without pain.

When plaintiff treated with a pain-management doctor, he complained of “immediate discomfort in his neck radiating all the way down his back” after the accident, which he “continues to have.” Plaintiff complained of “[c]hronic cervicalgia, thoracic and low back pain, right ankle pain, and bilateral hip discomfort status post motor vehicle accident.” The pain-management doctor stated, “It is puzzling to me that he hasn’t gotten better from the accident because it seems to be mostly myofascial problems which [i]n somebody his age should respond favorably to therapy and resolve by now but it has not.” But the fact that this provider was confused about why plaintiff’s pain persisted does not bear on whether plaintiff’s impairments arose from the motor-vehicle accident. Nor did the doctor, who knew plaintiff before the accident, suggest plaintiff was malingering or that his complaints predated the accident. To the contrary, the pain-management doctor did not question the source of plaintiff’s pain. He gave plaintiff an epidural injection and considered sending him for a medial nerve branch block. None of plaintiff’s medical providers suggested any other source of plaintiff’s pain.

Plaintiff’s medical records support that plaintiff complained of injuries arising in the immediate aftermath of the accident, which persisted for at least 19 months. While plaintiff apparently suffered from some unidentified sacroiliac joint and back problems before the accident, the records support that plaintiff suffered from acute and sudden neck, back, hip, ankle, and knee pain the day after the accident. A reasonable fact-finder could infer from plaintiff’s young age,

plaintiff's activities before the accident, plaintiff's reports of injuries the day after the accident, and the nature of plaintiff's injuries, that the motor-vehicle accident caused his impairments. Plaintiff has demonstrated that the accident was more than just a possible cause of his injuries. The trial court erred by granting summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Adrienne N. Young

/s/ Kathleen A. Feeney

*If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.*

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Defendant-Appellee.

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ON RECONSIDERATION

Before: YOUNG, P.J., and M. J. KELLY and FEENEY, JJ.

M. J. KELLY, J. (*concurring*).

I concur in the result only.

/s/ Michael J. Kelly