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Maola
v.
Mansour

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THE LAWRENCE COUNTY BAR ASSOCIATION

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COUNTY OF LAWRENCE, PENNSYLVANIA
CIVIL TRIAL LIST - GENERAL

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NOTICE

The Court of Common Pleas of Lawrence County will sit in special session as a Court of Remembrance in recognition of the following deceased members of the Lawrence County Bar on the 12th day of January, 2022 at 12:00 p.m. in Courtroom #1:

Thomas Bashara II, Esq.

Gerald Crowley, Esq.

Harry O. Falls, Esq.

David T. Mojock, Esq.

Anthony J. Kosciuszko, Esq.

Resolutions in memory of the deceased will be presented and anyone wishing to make a comment will be welcome to do so.

The Court of Remembrance was a long-standing tradition that once existed in the Lawrence County Court and which the Court now seeks to reinstate so that proper tribute to the memory of the deceased members of the Bar may be made.

Dominick Motto
President Judge

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

FIRST PUBLICATION

Brown, Pamela Jo Phillips
Late of Union Township, Lawrence County, Pennsylvania
Administrator: Larry W. Brown, 235 Penn Boulevard, New Castle, PA 16101
Attorney: Anthony Piatek, 414 N. Jefferson St., New Castle, PA 16101

Golis, Carol M.
Late of New Castle, Lawrence County, Pennsylvania
Executor: Stanley W. Golis, 1338 W 15th Avenue, Anchorage, AK 99501
Attorney: Louis M. Perrotta, Louis M. Perrotta, P.C., 229 S. Jefferson St., New Castle, PA 16101, (724) 658-9980

McCormick, Amy W.
Late of Slippery Rock Township, Lawrence County, Pennsylvania
Executrix: Samantha J. Carr, 3606 US 422, New Castle, PA 16101
Attorney: McNickle & Bonner, LLP, 209 West Pine St., Grove City, PA 16127-1595

Mercer, Ralph, Jr.
Late of Hickory Township, Lawrence County, Pennsylvania
Administrators: Matthew R. Mercer, 11086 Wingate Dr., Chagrin Falls, OH 44023 and Julia A. Mercer-Wood, 18745 Auburn Glen Dr., Chagrin Falls, OH 44023
Attorney: Gene G. Dimeo, Dimeo Law Group, PLLC, 120 Fourth St., Ellwood City, PA 16117, 724-752-9955

Pica, Sara E.
Late of Lawrence County, Pennsylvania
Executor: Robert J. Bastian, 4341 Hollow Rd., New Castle, PA 16101
Attorney: William M. Panella, 2616 Wilmington Rd., Suite B, New Castle, PA 16105, 724-658-2462

Phillips, Pearl M.
Late of New Castle, Lawrence County, Pennsylvania
Co-Executors: Deborah Thompson, 2315 Graham Ave., New Castle, PA 16101 and Terry Llewellyn, 1946 Morris St., New Castle, PA 16101
Attorney: Louis M. Perrotta, Louis M. Perrotta, P.C., 229 S. Jefferson St., New Castle, PA 16101, (724) 658-9980

SECOND PUBLICATION

DeCampli, David M.
Late of Perry Township, Lawrence County, Pennsylvania
Executors: Celeste R. Boehm, 118 McCreary Rd., New Brighton, PA 15066 and Timothy Broniszewski, 1041 Utica New Lebanon Rd., Utica, PA 16362
Attorney: Matthew T. Mangino, 315 N. Mercer St., New Castle, PA 16101

Kerr, Geraldine R.
a/k/a Kerr, Geraldine
Late of Wilmington Township, Lawrence County, Pennsylvania
Executor: Margaret Kerr
Attorney: Clark & Clark Law, P.C., Robert D.Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

McEwen, Joanne Elizabeth
Late of Neshannock Township, Lawrence County, Pennsylvania
Administrator: Dennis R. McEwen, 135 Seminole Dr., Pittsburgh, PA 15228
Attorney: Raymond C. Vogliano, Eckert Seamans Cherin & Mellott LLC, 600 Grant St., 44th Floor, Pittsburgh, PA 15219

Nicol, Edward W.
Late of Little Beaver Township, Lawrence County, Pennsylvania
Executors: Chelsey Shingler and Dale Vollmer
Attorney: Clark & Clark Law, P.C., Robert D.Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

Pounds, William
a/k/a Pounds, William D., Sr.
a/k/a Pounds, William Dale, Sr.
Late of the City of New Castle, Lawrence County, Pennsylvania
Executrix: Phyllis McConahy, 145 Patterson Rd., Slippery Rock, PA 16057
Attorney: Anthony Piatek, 414 N. Jefferson St., New Castle, PA 16101

Sheehan, Olive A.
Late of Bessemer, Lawrence County, Pennsylvania
Co-Executors: Lee P. Sheehan, 603

Columbiana Rd., Bessemer, PA 16112 and Timothea R. Kost, 329 Beagle Club Rd., Cowansville, PA 16218
Attorney: Carmen F. Lamancusa, 414 N. Jefferson St., New Castle, PA 16101

Stanczak, Bernice J.
Late of Lawrence County, Pennsylvania
Executor: David Stanczak, 1816 Chippingham Rd., Woodridge, IL 60517-4624
Attorney: Brian F. Levine, Levine Law LLC, 22 E. Grant St., New Castle, PA 16101

THIRD PUBLICATION

Folino, Xavier W.
Late of Slippery Rock Township, Lawrence County, Pennsylvania
Executrix: Sara A. Balough
Attorney: John J. DeCaro, Jr., Cusick, DeCaro & Langer, P.C., 100 Decker Dr., P.O. Box 5137, New Castle, PA 16105, 724-658-2525

Marino, Concetta M.
Late of Volant, Lawrence County, Pennsylvania
Executor: Daniel E. Marino
Attorney: Amy D. Reese, Sechler Law Firm LLC, 20206 Route 19, Suite 300, Cranberry Twp., PA 16066

Masters, Charles, Jr.
Late of New Castle, Lawrence County, Pennsylvania
Executor: Phillip Masters, 628 Johns St., New Castle, PA 16101
Attorney: Bradley G. Olson, Jr., 125 E. North St., New Castle, PA 16101, 724-656-6633

Taranto, Joseph T. Jr.
Late of Wayne Township, Lawrence County, Pennsylvania
Executor: Joseph T. Taranto III, 1824 Hassam Rd., Coraopolis, PA 15108
Attorney: Gene G. Dimeo, Dimeo Law Group PLLC, 120 Fourth St., Ellwood City, PA 16117

Trimble, John I.
Late of Shenango Township, Lawrence County, Pennsylvania
Executrix: Lori L. Mort, 512 Shenango Park Dr., New Castle, PA 16101
Attorney: Michael C. Bonner, 713 Wilmington Ave., New Castle, PA 16101

IN THE COURT OF COMMON PLEAS OF LAWRENCE COUNTY, PENNSYLVANIA ORPHAN'S COURT DIVISION

No. 70115 of 2021, M.D.

IN RE: Lucas John McConnell Schneider

NOTICE OF CHANGE OF NAME

Notice is hereby given that the Petition of Lucas John McConnell Schneider was filed in the above-named Court requesting a DECREE to change his name from **Lucas John McConnell Schneider** to **Lucas John McConnel**l.

The Court has fixed the 24th day of November, 2021, at 10:30 o'clock, a.m., Courtroom No. 4, as the time and date for the hearing on said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said petition should not be granted.

Susan M. Papa, Esqurie
Papa & Papa
439 Court St.
New Castle, PA 16101

L.C.L.J. - October 25, 2021

PUBLIC NOTICE

IN THE COURT OF COMMON PLEAS OF LAWRENCE COUNTY DIVISION

LAW-NO. 70099 OF 2021 M.D.

IN RE: RETURN OF THE LAWRENCE COUNTY TAX CLAIM BUREAU FOR SALE OF PROPERTIES HELD IN THE YEAR OF 2021 FOR DELINQUENT TAXES ACCRUED IN 2019.

Notice is hereby given that the Lawrence County Tax Claim Bureau did on the 14th day of

October 2021 file with the Court at the above number and term a Return of Sale of all properties sold by the said Bureau on September 24, 2021. Said Return of Sale was confirmed NISI by the Court on the 15th day of October 2021. Objections or Exceptions to this Return of Sale may be filed by any owner or creditor or other persons interested within thirty (30) days from the date of said Return filed with the Court and confirmed NISI. Otherwise, the Return will be confirmed ABSOLUTELY. Any money received through the aforesaid public sales shall be paid over by the Bureau in the priority as follows:

1. The costs of the sale and the proceedings upon which the sale was made.

2. Taxes and municipal claims and costs due thereon;

3. The tax liens of the Commonwealth;

4. Lien holders in the order of their priority; and

5. Any balance remaining due the real owner at the time of the sale.

All persons having any liens against the properties sold at these sales, which liens were not divested by law of this sale, shall give notice of their liens to the Tax Claim Bureau in writing, prior to the Absolute confirmation of the sale by the Court.

Artishia L. Foster, Director
Lawrence County Tax Claim Bureau

L.C.L.J. - October 25, 2021

NOTICE

To All Persons Interested, You Will Take Notice:

That the following accounts and statements of proposed distribution or request for audit of Executors, Administrators, Trustees and Guardians, Etc., have been filed in the Orphans' Court of the Court of Common Pleas of Lawrence County, Pennsylvania. The accounts and statements of proposed distribution are opening for examination.

All parties in interest have the right to file written objections to the account or statement of proposed distribution as *provided by law and rules of court.*

The said accounts will be presented to the Court for audit, distribution of assets and final confirmation on November 19, 2021 at 9:00 a.m. e.s.t., at which time all parties in interest will have the opportunity to be heard.

FIRST AND FINAL ACCOUNTS OF DISTRIBUTION
NOVEMBER 19, 2021

106/2018 O.C. First and Final Account of Judith Carol Fabian and James H. Foreman, Jr. Co-Executors of the Estate of James Harry Foreman, Deceased.

Jodi Klabon-Esoldo, Prothonotary, Clerk of Courts and Orphans' Court

L.C.L.J.- October 25 and November 1, 2021

Maola

v.

Mansour

Summary Judgment – Claim for Noneconomic Damages – Retroactive Full Tort Coverage – Insured and Insurer Error – 75 Pa.C.S. §1705(d) – Serious Injury – Issues of Material Fact

1. Where an insured intends to purchase full tort coverage automobile insurance and the insurer intends to provide it, but the insured unintentionally and unknowingly executes a limited tort coverage endorsement and the insured mistakenly provides limited tort coverage, the parties may rectify the error by effectuating retroactive full tort coverage despite the effect on a pending claim for noneconomic damages.

2. The existence of neck, knee and ankle pain requiring extensive treatment, coupled with reports of related severe pain and an impact on life is sufficient to create issues of material fact as to whether a plaintiff suffered a serious injury.

Motion for Partial Summary Judgment – Court of Common Pleas of Lawrence County, Pennsylvania, No. 10337 of 2019, C.A.

Jeffrey S. Tarker, Attorney for Plaintiff

Jeffrey C. Catanzarite, Attorney for Defendants

OPINION

MOTTO, P.J. December 16, 2020

This case is before the Court for disposition of the Motion for Partial Summary Judgment filed on behalf of the Defendants, Michael T. Mansour and Car Connection, Inc., who assert they are entitled to partial summary judgment to preclude Plaintiff from seeking noneconomic damages as Plaintiff was a limited tort selector at the time of the accident and she did not sustain a serious injury.

This case arose from a motor vehicle accident, which occurred on May 19, 2017, on State Route 158 in Wilmington Township, Lawrence County, Pennsylvania, when the vehicle being operated by Defendant, Michael T. Mansour, struck the rear portion of the vehicle being operated the Plaintiff, Susan M. Maola. Defendant Mansour was operating a vehicle owned by Defendant, Car Connection, Inc., which Defendant Mansour has admitted he operated in a negligent manner causing the accident. At the time of the collision, Plaintiff was operating a 2003 Honda Civic, which was insured by State Farm Mutual Automobile Insurance Company (hereinafter "State Farm").

The State Farm insurance policy covering Plaintiff's vehicle was initially provided through the Madeline Matta Agency located in New Castle,

Pennsylvania. In 2017, Plaintiff and her husband switched insurance agencies from the Madeline Matta Agency to the Jill Jack Agency. According to Ms. Jack, Plaintiff wished to continue the same coverage she previously had on her vehicle, which included full tort coverage. However, the forms sent to and executed by Plaintiff on April 21, 2017, included a limited tort endorsement. Plaintiff testified she was unaware of the change in her policy from full to limited tort coverage until after the accident when she attempted to open a medical claim for her injuries. At that time, Plaintiff was advised she had limited tort coverage. Plaintiff contacted the Jill Jack Agency, who then contacted State Farm to inquire as to whether anything could be done to remedy this discrepancy and provide Plaintiff with uninterrupted full tort coverage. The underwriter for State Farm instructed Ms. Jack that Plaintiff could obtain retroactive full tort coverage, if she paid the "back premiums" and executed a full tort selection form. Plaintiff completed the process set forth by State Farm and she was provided with full tort coverage retroactive to March 29, 2017, which was prior to the accident.

Plaintiff initiated this suit by filing a Praecipe for Writ of Summons on March 29, 2019, which Defendants responded to by filing a Praecipe for Rule to File a Complaint. Plaintiff subsequently filed a Complaint on May 10, 2019, asserting claims of negligence against both named Defendants. Furthermore, Plaintiff alleged she suffered serious and permanent injuries, which included cervicalgia, neck sprain, myalgia, chest contusion, knee pain and low back pain. Defendants responded by filing an Answer and New Matter on May 28, 2019. At the conclusion of discovery, Defendants filed the current Motion for Partial Summary Judgment on May 24, 2020.

The mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial. The summary judgment rule exists to dispense with a trial of the case or, in some matters, issues in a case, where a party lacks the evidence to establish or contest a material issue. Ertel v. Patriot-News Company, 544 Pa. 93, 674 A.2d 1038 (1996), reargument denied, (1996), certiorari denied, 519 U.S. 1008 (1996). Any party may move for summary judgment in whole or in part as a matter of law whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report or if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to jury. Pa.R.C.P. No. 1035.2.

Summary judgment may be granted only in cases where it is clear and free from doubt that there is no genuine issue as to any material fact and that the moving party is entitled to a summary judgment as a matter of law. Kafando v. Erie Ceramic Arts Co., 764 A.2d 59, 61 (Pa. Super. 2000) (citing

Rush v. Philadelphia Newspaper, Inc., 732 A.2d 648, 650-651 (Pa. Super. 1999)). The moving party bears the burden of proving the non-existence of any genuine issue of material fact. Id. A material fact, for summary judgment purposes, is one that directly affects the outcome of the case. Gerrow v. Shincor Silicones, Inc., 756 A.2d 697 (Pa. Super. 2000); Kuney v. Benjamin Franklin Clinic, 751 A.2d 662 (Pa. Super. 2000).

The non-moving party bears a clear duty to respond to a motion for summary judgment under Pa.R.C.P. No. 1035.3(a). The non-moving party must adduce sufficient evidence on issues essential to its case on which it bears the burden of proof such that a jury could return a verdict in its favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as matter of law. Ertel, *supra*. The non-moving party must demonstrate that there is a genuine issue for trial and may not rest on averments in its pleadings. DeSantis v. Frick Company, 745 A.2d 624 (Pa. Super. 1999); Merriweather v. Philadelphia Newspaper, Inc., 453 Pa. Super. 464, 469-472, 684 A.2d 137, 140 (1996).

When determining whether to grant a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Hughes v. Seven Springs Farm, Inc., 563 Pa. 501, 752 A.2d 339 (2000); Dean v. Commonwealth Department of Transportation, 561 Pa. 503, 751 A.2d 1130 (2000).

Summary judgment is proper only when the uncontroverted allegation in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. P.J.S. v. Pennsylvania State Ethics Comm’n, 555 Pa. 149, 153, 723 A.2d 174, 175 (1999). Unsworn exhibits and documents not complying with Pa.R.C.P. No. 1035 may not be considered as part of the record on summary judgment. Pa.R.C.P. No. 1035; Wheeler v. Johns-Manville Corp., 342 Pa. Super. 473, 493 A.2d 120 (1985). A party moving for summary judgment may not rely exclusively upon its own testimony or its witnesses’ oral testimony, through either testimonial affidavits or deposition testimony, even if uncontradicted, to establish a genuine issue of material fact. Borough of Nanty-Glo v. American Surety Co., 309 Pa. 236, 163 A. 523 (1932); Gruenwald v. Advanced Computer Applications, Inc., 730 A.2d 1004 (Pa. Super. 1999).

The trial court must confine its inquiry when confronted with a motion for summary judgment to questions of whether material factual disputes exist. Township of Bensalem v. Moore, 152 Pa. Cmwlth. 540, 620 A.2d 76 (1993). It is not the function of the Court ruling on a motion for summary judgment to weigh evidence and to determine the truth of the matter.

Keenheel v. Pennsylvania Securities Commission, 143 Pa. Cmwlth. 494, 579 A.2d 1358 (1990).

The first issue raised by Defendants is whether Plaintiff had full tort coverage on the date of the accident. Defendants assert it is not permissible to retroactively apply full tort coverage after an accident has already occurred. Plaintiffs contend the retroactive application of full tort coverage is administered at the discretion of the insurance provider and Plaintiff is entitled to retroactive application of full tort coverage as she complied with the procedure set forth by State Farm.

> Each person who elects the limited tort alternative remains eligible to seek compensation for economic loss sustained in a motor vehicle accident as the consequence of the fault of another person pursuant to applicable tort law. Unless the injury sustained is a serious injury, each person who is bound by the limited tort election shall be precluded from maintaining an action for any noneconomic loss.

75 Pa.C.S.A. § 1705(d). The tort option selected by the vehicle owner applies to all insureds under the motor vehicle insurance policy. Berger v. Rinaldi, 651 A.2d 553, 557 (Pa. Super. 1994)(quoting 75 Pa.C.S.A. § 1705(b)(2)). "In the case where more than one private passenger motor vehicle policy is applicable to an insured and the policies have conflicting tort options, the insured is bound by the tort option of the policy associated with the private passenger motor vehicle in which the insured is an occupant at the time of the accident if he is an insured on that policy and bound by the full tort option otherwise." Id.

Defendants cite to Moyer v. Musser, 38 Pa.D.&C.4th 49 (Com. Pl. Lancaster 1997), for the proposition a limited tort selector should be prohibited from retroactively obtaining full tort coverage after the occurrence of a motor vehicle accident. In that case, the plaintiffs filed suit seeking to recover damages for injuries sustained in a motor vehicle accident on April 20, 1994. The plaintiffs knowingly elected the limited tort option when they purchased a Federal Kemper motor vehicle insurance policy in 1990 and that policy was still in effect at the time of accident. Approximately one month after the accident on May 16, 1994, the plaintiffs' insurance agent, at the plaintiffs' request, changed insurance carriers from Federal Kemper to Anthem Insurance and changed the tort election option from limited to full tort. However, the date of issuance of the Anthem policy was listed as December 11, 1993, with a policy period of January 5, 1994 through July 5, 1994. The defendant filed a motion for summary judgment asserting the plaintiffs were limited tort selectors at the time of the accident and are precluded from seeking noneconomic damages.

The Moyer Court explained the Motor Vehicle Financial Responsibility Law (hereinafter "MVFRL") enacted a two-tier recovery system to provide insureds with differing levels of protection based upon the premium paid.

Id., 38 Pa.D.&C.4th at 53. Next, the Court examined the insurance policies at issue in order to determine whether the plaintiffs were full tort selectors at the time of accident. The Court acknowledged that, at the time of the accident, the plaintiffs were covered by the Federal Kemper policy, in which the plaintiffs elected to purchase limited tort coverage. It was not until approximately one month after the accident that plaintiffs purchased the Anthem policy with full tort coverage. Id. The Moyer Court explained it was unclear why the Anthem policy had an issue date of December 11, 1993, with a policy period of January 5, 1994 through July 5, 1994, which was the identical period as the Federal Kemper policy. Id. In addition, the Court recognized the Anthem declaration sheet reflects the higher premium for the full tort selection was $160, but does not indicate whether the plaintiffs paid the full amount or it was prorated over a period of six months. The Court was unsure as to whether payment of the full amount would entitle the plaintiffs to full tort coverage for the accident. Id. In fact, the Moyer Court expressed its skepticism toward the plaintiffs' argument in stating, "Would plaintiffs have had a *reasonable* expectation that the insurer intended to give retroactive full tort coverage? This would be highly unlikely given the fact that the insurance company already had knowledge of a claim by Mrs. Moyer for an automobile accident in April." Id. (emphasis supplied). The Court denied the defendant's motion for summary judgment as there remained discrepancies in the record as to the plaintiffs' tort election. Id., 38 Pa.D.&C.4th at 56-57.

The selection of insurance coverage options was addressed by the Supreme Court of Pennsylvania in Donnelly v. Bauer, 720 A.2d 447 (Pa. 1998). That case addressed two distinct factual scenarios. The first scenario involved appellants Havel, Urquhart and Trulear in which they purchased automobile insurance, received notice of the two tort options and selected the limited tort coverage. In the second scenario, appellants Donnelly, Henningham and Merriweather purchased their insurance through the Pennsylvania Assigned Risk Plan and they were provided with the Form PA-1000 containing the same information as the notice provided in scenario one. Those appellants also chose limited tort coverage. Subsequently, all of the appellants were involved in motor vehicle accidents and filed suit seeking to invalidate their limited tort selections on the grounds the insurance companies failed to provide proper notice before the purchase of the insurance policies as they were not notified of the difference in price of the annual premiums of each policy.

The trial court determined the appellants did not make a valid and knowing selection, which entitled them to the benefits of a full tort selection. The trial court certified that issue for interlocutory appeal, which was heard by the Superior Court of Pennsylvania. That Court reversed the trial court and held the appellants were limited tort electors. The Supreme Court then granted allocatur to decide whether the MVFRL required the appellants,

who applied for an original insurance policy to be issued after July 1, 1990, receive notice which contains premium information for both the full and limited tort options.

The Donnelly Court determined the appellants were entitled to notice as set forth in 75 Pa.C.S.A. § 1705(a)(4). As a result, the Court was required to determine whether the appellants were entitled to any remedy based upon having not received the proper notice. Id., 720 A.2d at 553. However, the Court held the MVFRL does not provide any remedy for an insured who did not receive proper notice of the distinction between the two tort options. Id., 720 A.2d at 554. The Court also recognized the appellants received a notice containing accurate information and they made the decision to obtain limited tort insurance coverage which included significantly lower premiums based upon that selection. Id. Accordingly, the Donnelly Court found the appellants were satisfied with their selection, including the lower premiums, until they were in an accident and are now seeking to escape their choice to obtain full tort recovery. Id. The Court ruled the appellants' position was in contravention to the MVFRL by seeking full tort coverage even though they paid the lower premiums for limited tort coverage. Id. Thus, the Donnelly Court affirmed the Superior Court's decision on the grounds the MVFRL does not provide a remedy for the failure to receive proper notice concerning the tort alternatives and the cost differentials. Id.

The rationale announced in Donnelly was applied by the trial court in Snyder v. Liberty Mutual Fire Ins. Co., 2013 WL 5913188 (Com. Pl. Bucks 2013). In that matter, the plaintiffs, who were husband and wife, were involved in a motor vehicle accident on December 3, 2007. On November 20, 2009, the plaintiffs initiated a tort claim against the other driver, and commenced a declaratory judgment action against Liberty Mutual Fire Insurance Company (hereinafter "Liberty Mutual") on August 17, 2011, to determine whether they were limited or full tort selectors.

The plaintiffs purchased an auto insurance policy from Prudential Insurance Company (hereinafter "Prudential") on January 16, 1996, in which they chose the limited tort coverage. In May of 2013, Liberty Mutual purchased all of Prudential's Pennsylvania auto insurance business. The plaintiffs claimed a new policy was issued by Liberty Mutual, but did not provide any evidence of the purported new policy, and Liberty Mutual denied the existence of another insurance policy. It was the plaintiffs' contention the new policy was issued without the proper notice explaining the difference between the limited and full tort selections. The plaintiffs produced forms showing an insurance contract between them and Liberty Mutual dated February of 2007, which showed they selected limited tort coverage. The plaintiffs further sought to pay Liberty Mutual the difference in the premiums between the limited and full tort options to obtain retroactive coverage for the period of January 27, 2007, through January 28, 2008, which would permit them to recover noneconomic damages against the other driver.

In opposition to the plaintiffs' position, State Farm Mutual Auto Insurance (hereinafter "State Farm") asserted Liberty Mutual was not required to provide a tort election form as the plaintiffs' original election of limited tort coverage was valid rendering reformation of the policy to be inappropriate.

First, the trial court in Snyder determined the plaintiffs were not entitled to a new tort election form because they made a valid selection of coverage, which remained effective until they decided to change the coverage to full tort in accordance with 75 Pa.C.S.A. § 1705(b)(1). Id. The decision to purchase limited tort coverage remained effective for the Liberty Mutual policy as it was a replacement or renewal for the policy originally purchased by the plaintiffs from Prudential. Id. The trial court also determined the plaintiffs' attempt to retroactively purchase full tort coverage could not be applied to the accident at issue as it was accomplished in contravention to the MVFRL. Id. In reaching that conclusion, the trial court cited to Donnelly for the proposition reformation of an insurance policy is not a remedy available pursuant to the MVFRL and would result in the insurance companies passing the additional costs upon other insureds, which is inapposite to the intention of the MVFRL. Id. The Court reasoned:

> The Snyders do not claim that they would have selected full tort coverage if they only had the chance. Instead, the Snyders seek to reform their policy for the limited period of time in which they were involved in an accident. To allow the Snyders to retroactively obtain better insurance coverage than they initially selected and paid for subverts both the cost containment policies of the MVFRL and the purpose of insurance, which functions as a hedge against risk. Therefore, because there is no statutory remedy available for the Snyders, and because the remedy they propose contravenes the purpose of the law, the purported reformation agreement between the Snyders and Liberty Mutual has no effect. Id. (emphasis supplied).

Thus, the trial court granted State Farm's cross motion for judgment on the pleadings and the other driver's answer and cross-motion for summary judgment and denied the plaintiffs' motion for judgment on the pleadings.

The plaintiffs then appealed to the Superior Court of Pennsylvania asserting Liberty Mutual's failure to send them a tort coverage selection form pursuant to 75 Pa.C.S.A. § 1705 in 2003 triggered the statutory remedy of default full tort coverage under 75 Pa.C.S.A. § 1705(a)(3). Snyder v. Liberty Mutual Fire Ins. Co., 2013 WL 11257220 (Pa. Super. 2013). The Court explained the transfer of an insurance policy from one company to another does not constitute a new policy pursuant to the MVFRL. Id. Resultantly, Liberty Mutual was not required to provide the plaintiffs with a new tort election form. Id. The plaintiffs were not permitted to retroactively reform their insurance policy to include full tort coverage. Id. Hence, the Snyder Court affirmed the decision of the trial court. Id.

In the case *sub judice*, Plaintiff's automobile was insured by State Farm and she obtained her original policy utilizing the Madeline Matta Agency. She elected to have full tort coverage for that policy. Plaintiff then decided to change insurance agents from the Madeline Matta Agency to the Jill Jack Agency, but Plaintiff testified she wished to continue to maintain the same level of insurance coverage through State Farm as provided by her original policy. Ms. Jack also confirmed in her deposition testimony it was Plaintiff's intention to maintain the same insurance coverage, which included full tort coverage. However, when Plaintiff executed her new policy from State Farm, she signed an endorsement on April 21, 2017, electing to purchase limited tort coverage. Plaintiff was then injured when the rear portion of her car was struck by Defendant on May 19, 2017. Plaintiff subsequently discovered she had limited tort coverage and immediately contacted the Jill Jack Agency to remedy the problem. Upon speaking with the insurance underwriter from State Farm, Ms. Jack informed Plaintiff she could obtain full tort coverage retroactively, if she paid the "back premiums" and executed the full tort coverage endorsement form. Plaintiff followed the underwriter's instructions and State Farm provided full tort coverage retroactive to March 29, 2017.

It is Defendants' contention Plaintiff is not entitled to retroactive full tort coverage as it is in violation of the MVFRL. However, the aforementioned case law does not fully support that conclusion. The trial court in Moyer denied the defendant's motion for summary judgment on the basis there remained outstanding issues of material fact as to the plaintiff's tort selection. However, the Moyer Court indicated its skepticism as to whether there was a reasonable expectation of retroactive full tort coverage because a claim was already made for the accident in that case when the plaintiff sought a new the insurance policy containing full tort coverage. In Donnelly and Snyder, the Courts did not permit the plaintiffs to obtain retroactive application of full tort coverage in cases where the insureds did not receive the proper statutory notices. Nevertheless, those Courts did not foreclose the ability to receive retroactive full tort benefits in all cases. Moreover, the current case is clearly distinguishable from the aforementioned cases because the insureds in those cases knowingly purchased limited tort coverage and were seeking retroactive full tort coverage as a remedy for the insurance provider failing to provide proper notice of the differences between full and limited tort coverage. There was never a mistaken belief on behalf of those insureds as to the tort coverage they purchased.

In the current matter, there is testimony indicating it was Plaintiff's intention to purchase full tort insurance and her execution of the limited tort coverage endorsement was completed in error. It is important to recognize Plaintiff's original policy purchased from State Farm contained full tort coverage and it was Plaintiff's intention to maintain the same coverage despite changing insurance agents. Plaintiff stated she was under the belief she purchased

full tort coverage until shortly after the accident when she was advised she only had limited tort coverage. Ms. Jack's deposition testimony further explained it was Plaintiff's expressed intention to receive the same coverage from State Farm as her previous policy, which included full tort coverage. In addition, State Farm tacitly acknowledge there was a mistake concerning Plaintiff's coverage selection and provided Plaintiff a procedure for obtaining retroactive full tort coverage, which Plaintiff completed. The circumstances in the current matter provide substantially more issues of material fact than Moyer as it relates to whether Plaintiff is entitled to seek noneconomic damages based upon a retroactive application of full tort coverage because there is evidence Plaintiff had a reasonable expectation of full tort coverage at the time of the accident. Hence, Defendants' Motion for Partial Summary Judgment as it relates to this issues is denied.

Defendants also assert Plaintiff did not sustain a serious injury precluding her from recovering noneconomic damages as a limited tort selector. Although, the Court has previously determined there remains an issue of material fact as to Plaintiff's status as a full or limited tort selector, it will proceed to address whether Plaintiff sustained serious injury in the accident.

It is well established a limited tort selector cannot recover for noneconomic damages, unless he or she sustained serious injury. *See* 75 Pa.C.S.A. § 1705(d). Serious injury is defined as "A personal injury resulting in death, serious impairment of body function or permanent serious disfigurement." 75 Pa.C.S.A. § 1702. The Court must consider the following factors when determining whether a limited tort selector has sustained a serious injury: "[1] the extent of the impairment, [2] the length of time the impairment lasted, [3] the treatment required to correct the impairment, and [4] any other relevant factors." Cadena v. Latch, 78 A.3d 636, 641 (Pa. Super. 2013). The Court must focus on how the injuries affected the injured party and not on the injuries themselves. Id.

In Cadena, the appellee asserted the appellant did not sustain serious injuries as a result of the motor vehicle accident and was not entitled to recover noneconomic damages. The appellant was a limited tort selector, who was injured when the rear of his vehicle was struck by the vehicle being operated by the appellee. The appellant presented evidence that, as a result of the accident, he sought treatment from a physician for injuries, which included a cervical radiculitis, lumbar radiculitis, bilateral C5 radiculopathy, left-sided C6 radiculopathy, L4-L5 radiculopathy, cervical sprain and strain, lumbrosacral sprain and strain, lumbar disc bulging and multilevel lumbar HNP. The appellant's treating physician provided a written letter indicating it was his opinion the injuries were the result of the accident. The appellant testified as to the pain she has endured from the injuries and how they have affected her life, such as not being able to engage with her children in activities because she is forced to lie in bed most of the time. The Superior Court determined the trial court improperly granted summary judgment to

the appellee on this issue as the appellant presented sufficient evidence to indicate the injuries were caused by the accident and the evidence could lead reasonable minds to conclude the appellant sustained serious injuries. Id., 78 A.3d at 643-644. The Court's decision was based upon the well-established principle that disputes as to whether a person suffers serious injuries, in all but the clearest cases, are factual issues to be decided by a jury at trial. Id., 78 A.3d at 644.

In the current case, Plaintiff attached a medical summary to her Response to Motion for Partial Summary Judgment providing a narrative of her injuries and medical treatment she received. It must be noted Plaintiff indicated she is in possession of all the associated medical records and can provide them upon request. Defendants did not object to Plaintiff's summary of her treatment.

Plaintiff indicates she experienced pain in her neck and chest as a result of the accident, so she sought treatment from David Anderson, M.D., on May 20, 2017. He ordered Plaintiff to undergo CT scans of her cervical spine and thorax as well as an EKG. Dr. Anderson diagnosed Plaintiff with a chest contusion and cervical sprain. She then followed up with her primary care physician, Elbert Acosta, M.D., on June 2, 2017, and she reported continued chest pain, headaches and pain in her left knee. Dr. Acosta diagnosed Plaintiff with cervicalgia, myalgia, headache and shortness of breath. Also on June 13, 2017, Plaintiff underwent an X-ray of her knee ordered by Dr. Acosta, which revealed no acute osseous and he instructed Plaintiff to use Biofreeeze and receive message therapy.

Plaintiff was later evaluated by Elite Sports and Spine Chiropractic for ongoing neck, bilateral shoulder and left knee pain on July 25, 2017. Darren Holmes, MS, DC, CCSP, attributed her neck pain to a sprain or strain as a result of the accident. Plaintiff was ordered to undergo chiropractic treatment two to three times per week for a period of six weeks. Plaintiff was again examined by Dr. Acosta on September 25, 2017, for her neck and shoulder pain with the added symptom of numbness in both of her hands. Dr. Acosta advised Plaintiff to temporarily refrain from receiving chiropractic treatment. Plaintiff was also examined by Dr. Acosta on October 17, 2017, for similar issues and began receiving chiropractic therapy again on November 28, 2017.

An MRI of Plaintiff's knee and ankle revealed tricompartmental osteoarthritis, diminutive and truncated posterior horn of the medial meniscus, and large joint effusion with a tine loose body in the posterior joint. She was examined by Bryan Hooks, D.O., for an orthopedic consult and he recommended intra-articular corticosteroid injection to the right knee and physical therapy for the ankle pain.

Plaintiff continued to receive chiropractic treatment from Farragher Chiropractic due to constant pain in May, June, July and November of 2019

as well as January 20, 2020. She also began treating with John Wrightson, M.D., for pain management commencing on May 4, 2020. Dr. Wrightson diagnosed Plaintiff with spondylosis without myelopathy or radiculopathy, intervertebral disc degeneration, sacroilitis, sprain of the ligaments of the lumbar spine and chronic pain syndrome. He prescribed her Tramadol and scheduled epidural steroid injections along with instructions to use ice/heat, bracing, stretching and range of motion/functional exercises to aid in managing her conditions. Plaintiff has continued to be treated by Dr. Wrightson to the current date in an effort to alleviate her pain.

It appears Plaintiff has undergone extensive treatment in attempts to alleviate her neck, knee and ankle pain. She has continuously reported her pain is severe and it has impacted her life. Defendant has presented the expert opinion of William Abraham, M.D., stating there is no evidence to indicate the injuries sustained by Plaintiff in the accident resulted in a significant amount of treatment. This was presented to refute the allegations Plaintiff's injuries and pain are a result of the accident and they constitute serious injuries as defined by 75 Pa.C.S.A. § 1702. Despite the medical examination performed by and the conclusions reached by Dr. Abraham, Plaintiff has presented sufficient evidence to create issues of material fact regarding Plaintiff's injuries which must be resolved by a jury at trial. There is nothing of record to demonstrate it is clear and free from doubt that Plaintiff did not suffer serious injuries in the accident at issue.

Based upon the foregoing, Defendants' Motion for Partial Summary Judgment is denied in its entirety.

ORDER OF COURT

AND NOW, this 16th day of December, 2020, after consideration of the arguments and briefs submitted by counsel and a complete review of the record, and in accordance with the accompanying Opinion of even date herewith, it is ORDERED, ADJUDGED, and DECREED that the Defendants' Motion for Partial Summary Judgment is DENIED.

The Prothonotary shall serve a copy of this Order of Court and attached Opinion to counsel of record by way of appropriate service.

BY THE COURT:

Dominick Motto

President Judge