

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0298**

Candice Martinez,
Appellant,

vs.

LM General Insurance Company,
Respondent

**Filed October 14, 2024
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CV-23-13633

Michael A. Bryant, Tucker L. Isaacson, Bradshaw & Bryant, PLLC, Waite Park, Minnesota
(for appellant)

Nicole R. Weinand, Alex M. Halverson, Law Office of John C. Syverson, London,
Kentucky (for respondent)

Considered and decided by Reyes, Presiding Judge; Wheelock, Judge; and Florey,
Judge.*

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant insured challenges the district court's grant of summary judgment to
respondent insurer, arguing that the district court erred when it determined that she was not

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

entitled to no-fault insurance benefits for injuries she suffered as a result of a collision between the motorcycle she was driving and a motor vehicle. We affirm.

FACTS

In August 2021, appellant Candice Martinez was driving her motorcycle when she collided with a motor vehicle, sustaining severe injuries. Martinez submitted a claim to her automobile insurer, respondent LM General Insurance Company, for her medical expenses based on two insurance policies she had purchased from the insurer, and LM denied coverage.

Martinez commenced an action against LM, alleging in her complaint that LM breached the insurance policies by denying benefits. LM answered the complaint, denying all of Martinez's allegations. LM then brought a summary-judgment motion, arguing that Martinez had not provided substantial evidence establishing a genuine issue of material fact that she was entitled to no-fault economic-loss benefits under the Minnesota No-Fault Automobile Insurance Act (the no-fault act), Minn. Stat. §§ 65B.41-.71 (2022), and the policies.¹ Specifically, LM argued that the evidence, which consisted only of Martinez's insurance policies and the medical records and bills she submitted to LM to support her

¹ We cite the most recent version of the no-fault act because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case"). For the same reason, we cite the current versions of other statutes cited in this opinion. We also cite the 2022 no-fault act in this opinion because, although the legislature amended sections of the no-fault act in 2023, none of the amended sections are relevant to this case.

claim,² was insufficient to show that Martinez’s injuries arose out of the “maintenance or use of a motor vehicle” and not “while on, mounting or alighting from a motorcycle,” as the no-fault act requires. Minn. Stat. § 65B.46, subds. 1, 3. The district court agreed with LM and granted the motion.

Martinez appeals.

DECISION

Martinez challenges the district court’s grant of summary judgment, arguing that she was entitled to no-fault benefits because (1) the issue of proximate cause was a question of fact for the jury to decide and (2) she was a pedestrian at the time of the injury.

“We review a district court’s summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Summary judgment is appropriate when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff’s claim.” *Lubbers v. Anderson*,

² LM filed its summary-judgment motion before the parties’ stipulated discovery deadline, but Martinez did not argue to the district court and does not argue on appeal that she needed more time to conduct discovery. See Minn. R. Civ. P. 56.04 (providing that, when “a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . allow time to obtain affidavits or to take discovery”). Martinez did not file any evidence to oppose LM’s motion for summary judgment.

539 N.W.2d 398, 401 (Minn. 1995). The moving party bears the burden of showing that it is entitled to summary judgment. Minn. R. Civ. P. 56.01.

The no-fault act provides, in relevant part:

If [an] accident causing injury occurs in this state, every person suffering loss from injury arising out of maintenance or use of a motor vehicle or as a result of being struck as a pedestrian by a motorcycle has a right to basic economic loss benefits.

. . . .

. . . [I]njuries suffered by a person while on, mounting or alighting from a motorcycle do not arise out of the maintenance or use of a motor vehicle although a motor vehicle is involved in the accident causing the injury.

Minn. Stat. § 65B.46, subds. 1, 3. The insured “bears the burden of proving the occurrence of an accident arising out of the operation, use or maintenance of a motor vehicle.” *LaValley v. Nat’l Fam. Ins. Corp.*, 517 N.W.2d 602, 605 (Minn. App. 1994), *rev. denied* (Minn. Aug. 24, 1994).

Martinez argues that whether her injuries arose out of the use of a motor vehicle is an issue of proximate cause and is therefore a question of fact for the jury to decide. But Minnesota caselaw is clear that whether an injury arose out of the use of a motor vehicle is a question of law for the court to decide. *See Cont’l W. Ins. Co. v. Klug*, 415 N.W.2d 876, 877-78 (Minn. 1987) (explaining that this question is a “legal issue” and that the causation standard is “something less than proximate cause” (quotation omitted)); *Kemmerer v. State Farm Ins. Cos.*, 513 N.W.2d 838, 842 (Minn. App. 1994) (stating that “[w]hether an injury arose out of the maintenance or use of a motor vehicle is a question of law”), *rev. denied*

(Minn. June 2, 1994); *State Farm Fire & Cas. Co. v. Strobe*, 481 N.W.2d 853, 855 (Minn. App. 1992) (describing this question as a legal issue and explaining that appellate courts “need not defer to the [district] court’s determination”), *rev. denied* (Minn. May 15, 1992).

Courts employ a three-factor test to determine whether an injury arose out of the maintenance or use of a motor vehicle: (1) they consider the extent of the causation between the vehicle and the injury; (2) if causation is present, they consider whether an act of independent significance broke the causal chain; and (3) if no intervening act broke the causal chain, they determine whether the vehicle was being used for transportation at the time of the injury. *Kemmerer*, 513 N.W.2d at 842. Therefore, on summary judgment, Martinez was required to do more than establish a genuine issue of material fact. Rather, she was required to present evidence such that the district court would determine as a matter of law that her injuries arose out of the use of a motor vehicle.

Although the allegations in Martinez’s complaint provide context for her arguments, they do not provide evidentiary support. In her complaint, Martinez alleged that, while she was driving her motorcycle, the driver of a motor vehicle “did not have his headlights on and failed to maintain a proper lookout. As a result, [Martinez] collided with [the driver’s] vehicle. Plaintiff was thrown under [the driver’s] vehicle. [The driver] then drove over [Martinez’s] leg causing serious and permanent injuries.” She argues that these allegations demonstrate that she was not on, mounting or alighting from a motorcycle, *see* Minn. Stat. § 65B.46, subd. 3, when the driver drove over her leg—which, she asserts, is the sole cause of her injuries—and that, therefore, she is entitled to benefits under the no-fault act. The

district court determined that Martinez’s “naked assertion[s] in argument” were insufficient to withstand summary judgment.

Martinez agrees that the parties did not conduct discovery and argues that her complaint demonstrates how she was injured. “Evidence offered to support or defeat a motion for summary judgment must be such evidence as would be admissible at trial.” *See Metro. Transp. Network, Inc. v. Collaborative Student Transp. of Minn., LLC*, 6 N.W.3d 771, 779 (Minn. App. 2024) (quoting *Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991)), *rev. denied* (Minn. July 23, 2024). In general, allegations in a complaint are not evidence. *Id.* at 780. To constitute admissible evidence, the complaint must be verified and the facts in the complaint must meet the requirements for an affidavit under Minn. R. Civ. P. 56.03(d). *Id.* at 780-81 (holding that a complaint may be sufficient to withstand summary judgment if “(1) the allegations are made on personal knowledge, (2) the allegations are based on facts that would be admissible in evidence, and (3) the face of the complaint shows the competence of the verifying party to testify on the matters stated, consistent with Minn. R. Civ. P. 56.03(d)”). “[I]n addition to the requirements set forth in Minn. R. Civ. P. 56.03(d), an affidavit must be notarized or signed under penalty of perjury.” *Id.* at 780 n.1 (quotation omitted); Minn. R. Gen. Prac. 15. As relevant here, for a complaint to be verified, a party must submit an affidavit “that the affiant knows the contents of the pleading [and] that the averments thereof are true of [the] affiant’s own knowledge.” Minn. Stat. § 544.15(1) (2022).

The allegations in Martinez’s complaint do not meet these requirements because, first, the complaint is not verified by an affidavit signed by Martinez or any other party,

and, second, the allegations are not made on personal knowledge as the complaint is signed only by Martinez's attorney. Therefore, the allegations in Martinez's complaint are not admissible evidence, and Martinez's medical records are the only evidence in the record that may be considered to determine whether her injuries arose out of the "maintenance or use of a motor vehicle." Minn. Stat. § 65B.46, subd. 1.

The medical records that Martinez provided attribute her injuries to the collision between her motorcycle and a motor vehicle. Two days after the accident, a provider wrote that Martinez was "presenting for" a "motorcycle accident," that she "presents to the clinic today to discuss pain after a motor vehicle accident," and that "she was on a motorcycle when she was in an accident." Four days after the accident, one provider wrote that Martinez "had a motor vehicle accident." In addition, the records contain the phrases "motorcycle versus auto," "motorcycle accident," and "motorcycle crash," and they show that Martinez sustained various injuries, including a fractured femur.

The only evidence properly before this court—Martinez's medical records—identifies her injuries as arising out of a collision involving the motorcycle she was driving and a motor vehicle. There is no description of the sequence of events, and there are no details about what part of the accident caused her injuries. Because the evidence shows that Martinez's injuries were sustained while she was on, mounting, or alighting from a motorcycle, Martinez has not met her burden to prove that her injuries arose out of the use

of a motor vehicle.³ We therefore conclude that the district court did not err by granting LM's motion for summary judgment.

Affirmed.

³ Because we do not consider arguments not supported by legal authority, we decline to reach Martinez's alternative argument that she was a pedestrian and is therefore entitled to benefits under the no-fault act. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). As noted above, there is no evidence in the record to support Martinez's assertion that she was off of the motorcycle before she sustained injury.