

NOTICE
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2012 IL App (4th) 111145-U

Filed 8/28/12

NO. 4-11-1145

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CYNTHIA M. BOHL,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
STATE FARM MUTUAL AUTOMOBILE)	No. 11L90
INSURANCE COMPANY,)	
Defendant-Appellee.)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court concluded that the trial court erred by (1) denying the plaintiff's motion to strike because a portion of the affidavit in support of the defendant's motion for summary judgment did not comply with Illinois Supreme Court Rule 191(a) (eff. July 1, 2002) and (2) finding that the defendant was entitled to summary judgment because a *bona fide* dispute defeated the plaintiff's claim for attorney fees under section 155 of the Illinois Insurance Act.

¶ 2 In March 2007, plaintiff, Cynthia M. Bohl, who was then 53 years old, was involved in an automobile accident with an uninsured motorist who failed to yield to Bohl's right-of-way. Bohl suffered injuries that, over the span of more than two years, resulted in medical bills totaling \$79,818. At the time of the accident, Bohl had a valid insurance policy issued by defendant, State Farm Mutual Automobile Insurance Company, that covered a maximum of \$100,000 in uninsured motorist claims and \$25,000 for medical payments. State

Farm later acknowledged the reasonableness of Bohl's medical bills related to her neck pain, wrist burns, back pain, left leg pain, and carpal tunnel syndrome, which it admitted were caused or exacerbated by the March 2007 accident. State Farm, however, contested Bohl's assertion that the accident exacerbated her preexisting arthritic left hip so as to require her to undergo hip replacement surgery. In March 2011, a divided arbitration panel awarded Bohl her uninsured policy limit of \$100,000.

¶ 3 In April 2011, Bohl sued State Farm for reimbursement of attorney fees and costs pursuant to section 155 of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/155 (West 2010)), claiming that State Farm's delay in settling her uninsured motorist claim was vexatious and unreasonable.

¶ 4 The following month, State Farm filed a combined motion, requesting, in part, that the trial court grant summary judgment in its favor pursuant to section 2-1005(b) of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1005(b) (West 2010)). Appended to State Farm's combined motion was an affidavit from its appointed arbitrator, opining, in pertinent part, that Bohl's arthritic left hip condition was caused by "failed back syndrome."

¶ 5 In June 2011, Bohl filed a motion to strike a portion or the entire affidavit because the affiant did not comply with Illinois Supreme Court Rule 191(a) (eff. July 1, 2002). Specifically, Bohl claimed that the medical opinion expressed in the affidavit was inappropriate because the arbitrator was not a licensed physician.

¶ 6 Following an October 2011 hearing, the trial court (1) denied Bohl's motion to strike the affidavit at issue and (2) granted summary judgment in State Farm's favor.

¶ 7 Bohl appeals, arguing that the trial court erred by (1) denying her motion to strike

a portion or all of State Farm's affidavit and (2) granting summary judgment in State Farm's favor. For the reasons that follow, we reverse and remand for further proceedings.

¶ 8

I. BACKGROUND

¶ 9

A. The Undisputed Facts and the Controversy at Issue

¶ 10

On March 28, 2007, Bohl was involved in an automobile accident with an uninsured motorist who failed to yield to Bohl's right-of-way. Bohl suffered injuries to her neck, wrists, back, left leg, and left hip that over the span of more than two years (March 28, 2007, through April 6, 2009) resulted in medical bills totaling \$79,818. At the time of the accident, Bohl had a valid insurance policy issued by State Farm that covered a maximum of \$100,000 for uninsured losses and \$25,000 for medical payments. State Farm later acknowledged the reasonableness of Bohl's medical bills related to her neck pain, wrist burns, back pain, left leg pain, and carpal tunnel syndrome, which it admitted were caused or exacerbated by the March 2007 accident. State Farm, however, contested Bohl's assertion that the accident exacerbated her preexisting arthritic left hip so as to require her to undergo hip replacement surgery. In March 2011, a divided arbitration panel awarded Bohl her uninsured policy limit of \$100,000.

¶ 11

B. Bohl's Medical History Prior to the Vehicle Accident

¶ 12

In 1995, Doctor Dianna Widicus became Bohl's primary care physician. Although Widicus had seen Bohl "a lot of times" between 1995 through 2003, she could not recall Bohl complaining of hip pain. In 2004 and thereafter, Bohl informed Widicus that she had been experiencing lower back and left leg pain.

¶ 13

In October 2005, Bohl consulted with Doctor Michael P. McIlhany, a neurosurgeon, about her persistent back and leg pain. McIlhany's medical notes, which he provided to

Widicus, showed that he initially recommended Bohl undergo therapy and injections to correct what he observed were lumbar vertebra disk protrusions. Because Bohl's condition continued to worsen, in January 2006, McIlhany performed a laminectomy—that is, he surgically removed part of the posterior arch of Bohl's vertebra to correct the protruding disks.

¶ 14 After the surgery, Bohl informed McIlhany that although her leg symptoms were "largely relieved," she experienced occasional pain. In April 2006, McIlhany observed that Bohl continued to limp because of "occasional pain and weakness in her left leg." McIlhany documented Bohl's complaint that on "[s]ome days[, Bohl] does quite well and was able to walk in the park without any difficulty, but then other times [Bohl] says that her back and legs seem to be in agonizing pain and her activities are quite restricted." McIlhany ordered Bohl to undergo physical therapy three times a week for a month. In September 2006, Bohl informed Widicus that her left leg continued to be "problematic."

¶ 15 In March 2007, Bohl again complained to McIlhany about left leg pain that increased when she walked. McIlhany scheduled a March 27, 2007, magnetic resonance imaging (MRI) test to determine the origin of Bohl's pain. The MRI revealed, in part, that Bohl continued to have mild to moderate diffuse disc bulging. The following morning, the uninsured motorist collided with Bohl's vehicle.

¶ 16 C. The Events Following the Vehicle Accident

¶ 17 Bohl suffered burns to her wrist as a direct result of the accident, which were caused by the deployment of her vehicle's air bags. In April 2007, Bohl again consulted with McIlhany about her persistent left leg pain but opted not to undergo further medical treatment. (McIlhany has since died.) In August 2007, Bohl changed her mind and received a lumbar

epidural steroid injection for her left leg pain. In May 2008, Doctor Michael W. Neumeister, a plastic surgeon, confirmed that Bohl was suffering from bilateral carpal tunnel syndrome, which Bohl claimed was caused by the wrist injuries she suffered as a result of the March 2007 accident.

¶ 18 An X-ray taken later that same month (May 2008) revealed that Bohl had arthritis in her left hip. The following month, Doctor David J. Olysav, an orthopedic surgeon, reported that the "imaging" revealed that Bohl was suffering from "severe degenerative arthritis of the left hip." In January 2009, Doctor D. Gordon Allan, an orthopedic surgeon, scheduled Bohl for a left hip replacement, based on his impression that Bohl was "quite debilitated" due to her "advanced degenerative arthritis of her hip." That same month, Bohl sent a letter to State Farm, claiming reimbursement under the terms of her policy. Attached to her request was a letter from Widicus, which supported Bohl's claim that her preexisting hip condition was aggravated by the March 2007 accident. On April 6, 2009, Allen performed Bohl's left hip replacement.

¶ 19 In June 2009, Bohl complied with State Farm's request to participate in an independent medical examination (IME) conducted by Doctor Gordon Chu, a neurosurgeon chosen by State Farm for that purpose. In October 2009—after making several requests for the IME results—State Farm provided Bohl a copy of Chu's written evaluation. State Farm also included an addendum in which Chu responded to additional questions State Farm posed concerning Bohl's bilateral carpal tunnel syndrome. In his June 2009 IME, Chu provided, in pertinent part, the following opinions to specific questions posed by State Farm, which he characterized were within a "reasonable degree of medical and surgical probability":

1. What is/are the injuries or conditions diagnosed and docu-

mented in the clinic records? *The clinical conditions diagnosed in the clinical records appear to be arthritis of the left hip, lumbar stenosis, [and] cervical disc herniation[.] Bohl also stated that she is being treated for carpal tunnel syndrome.*

2. Is the treatment related to the injuries or conditions diagnosed and documented in the clinical records? *In my opinion[,] the treatments provided were related to the injuries or conditions diagnosed and documented in the clinical records.*

3. Based on your examination of the patient, your review of the submitted records, your clinical experience, and any applicable research[,] was the patient's condition caused by the March 28, 2007, accident? *Based on my opinion[,] I believe the neck pain and the exacerbation of her lower back pain was caused by the March 28, 2007, accident. However, I am not qualified to answer whether or not her left hip arthritis pain was exacerbated by the motor vehicle accident given that I am [a] neurosurgeon and not an orthopedic surgeon.*

* * *

6. What is your diagnosis ***? *The patient has cervical disc herniations, lumbar stenosis, left hip arthritis, and bilateral carpal tunnel syndrome.*

7. What is the patient's prognosis? *The patient's prognosis is*

good. However, her prognosis for the left hip arthritis is beyond my area of expertise." (Emphases added.)

In his September 2009 addendum, Chu opined—to a reasonable degree of medical and surgical probability—that the March 2007 accident caused Bohl's bilateral carpal tunnel syndrome.

¶ 20 In November 2009, Bohl sent a letter to State Farm in which she made a policy limit demand of \$100,000. In January 2010, State Farm offered Bohl \$10,000 to settle her uninsured motorist claim. At that time, State Farm had paid \$21,358 of Bohl's medical bills, which totaled \$79,818. (It appears from the record that Bohl's total medical bills of \$79,818 included a \$42,666 charge for her hip replacement surgery). That same month, Bohl—frustrated with State Farm's failure to settle her claim—submitted a request for arbitration in accordance with the terms of her insurance policy. Bohl selected attorney David A. Stjern as her arbitrator. State Farm selected attorney Randall A. Mead as its arbitrator. Stjern and Mead selected attorney Grady Holley as the third arbitrator. Prior to the start of the arbitration, State Farm "conceded that *** Bohl's neck pain, *** bilateral wrist burns, and *** carpal tunnel syndrome were a result of her collision[.]" State Farm also conceded that the accident "had likely exacerbated *** Bohl's pre-existing low back condition." State Farm claimed only that Bohl's degenerative hip arthritis was not related to the March 2007 accident.

¶ 21 In March 2011, arbitration commenced. The evidence Bohl presented regarding causation consisted of depositions by Doctor Per Freitag—an orthopedic surgeon—Widicus, and Chu. (Because the dispute before us concerns Bohl's arthritic left hip, we limit our discussion to the evidence the medical experts provided concerning that issue.)

¶ 22 In his June 2010 evidence deposition, Freitag opined to a reasonable degree of

medical certainty that (1) it was more likely than not that Bohl's preexisting arthritic hip condition was aggravated by the March 2007 accident and (2) the aggravation of Bohl's arthritic hip necessitated her hip replacement surgery.

¶ 23 In her November 2011 evidence deposition, Widicus opined to a reasonable degree of medical certainty that (1) a person could have a degenerative arthritic condition and be symptom free, (2) arthritis can become symptomatic, pronounced, and significant as a result of trauma, and (3) the March 2007 accident aggravated Bohl's preexisting arthritic hip condition to the point of requiring hip replacement surgery.

¶ 24 In his February 2011 evidence deposition, Chu was not asked and he did not volunteer any information regarding his nonassessment of whether Bohl's arthritic left hip condition was exacerbated by the March 2007 vehicle accident.

¶ 25 In its undated arbitration memorandum, State Farm argued that over a 15-month period after the March 2007 accident, Bohl was examined by at least three different doctors on seven different occasions and did not complain of hip pain. State Farm concluded by proclaiming that no legitimate basis existed on which to conclude that Bohl suffered a left hip injury as a result of the March 2007 accident or an aggravation of a preexisting hip injury on that date.

¶ 26 In March 2009—in a two-to-one decision—the arbitrators disagreed with State Farm's position and ruled in favor of Bohl, awarding her the policy limit of \$100,000 minus the \$21,358 State Farm had already paid toward her medical expenses. As part of their decision, Holley and Stjern appended their respective affidavits, confirming the evidence presented to them as impartial arbitrators.

¶ 27 In April 2011, Bohl sued State Farm for reimbursement of attorney fees and costs

pursuant to section 155 of the Insurance Code (215 ILCS 5/155 (West 2010)), claiming that State Farm's delay in settling her uninsured claim was vexatious and unreasonable.

¶ 28 In May 2011, State Farm filed a combined motion, requesting that the trial court either (1) dismiss Bohl's claim under section 2-615(b) or 2-619(a)(9) of the Procedure Code (735 ILCS 5/2-615(b), 2-619(a)(9) (West 2010)) or (2) grant summary judgment in its favor pursuant to section 2-1005(b) of the Procedure Code (735 ILCS 5/2-1005(b) (West 2010)). Appended to its combined motion was an affidavit from Mead—its appointed arbitrator—opining, in pertinent part, that the sole and proximate cause of Bohl's left hip pain was "failed back syndrome."

¶ 29 In June 2011, Bohl filed a motion to strike a portion or the entire affidavit proffered by Mead pursuant to Illinois Supreme Court Rule 191(a) (eff. July 1, 2002), essentially claiming that Mead's medical opinion was not appropriate, given that he was not a licensed physician.

¶ 30 Following an October 2011 hearing, the trial court (1) denied Bohl's motion to strike Mead's affidavit, finding that Mead was merely reciting the factual basis supporting his dissent instead of espousing a medical conclusion and (2) granted summary judgment in State Farm's favor, finding that a *bona fide* dispute throughout, supported State Farm's handling of Bohl's insurance claim.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 A. Bohl's Claim That the Trial Court Erred by Denying
Her Motion To Strike

¶ 34 Bohl argues that the trial court erred by denying her motion to strike a portion or

all of State Farm's affidavit. We agree insofar as the court failed to strike a portion of State Farm's affidavit.

¶ 35 Illinois Supreme Court Rule 191(a) (eff. July 1, 2002), entitled, "Proceedings Under Sections 2-1005, 2-619 and 2-301(b) of the Code of Civil Procedure," provides as follows:

"Motions for summary judgment under section 2-1005 of the Code of Civil Procedure *** must be filed before the last date, if any, set by the trial court for the filing of dispositive motions. Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure *** shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counter-claim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used."

¶ 36 "An affidavit submitted in the summary judgment context serves as a substitute for testimony at trial." *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335, 775 N.E.2d 987, 994 (2002). Strict compliance with Rule 191(a) is necessary to ensure trial courts are presented with competent evidence upon which to base a decision. *Robidoux*, 201 Ill. 2d at 336, 775 N.E.2d at

994. "A court does not take as true un rebutted affidavits, or portions thereof, that do not comply with Supreme Court Rule 191(a)." *City of Oakbrook Terrace v. Suburban Bank & Trust Co.*, 364 Ill. App. 3d 506, 527, 845 N.E.2d 1000, 1017 (2006) (Callum, J., dissenting) (citing this court's opinion in *Forrester v. Seven Seventeen HB St. Louis Redevelopment Co.*, 336 Ill. App. 3d 572, 579, 784 N.E.2d 834, 839 (2002)). When only a portion of the affidavit is improper under Rule 191(a), a trial court should only strike the improper portions of the affidavit. *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 128, 790 N.E.2d 882, 891 (2003). We review *de novo* whether an affidavit complies with Rule 191. *Jackson v. Graham*, 323 Ill. App. 3d 766, 773, 753 N.E.2d 525, 531 (2001).

¶ 37 We first note that in her brief to this court, the majority of Bohl's specific assertions to support her claim that the trial court erred by denying her motion to strike a portion or all of State Farm's affidavit are directed at paragraph 10 of the affidavit at issue. In that paragraph, Mead—State Farm's appointed arbitrator—states as follows (we also include the preceding paragraph to place paragraph 10 in its proper context):

"9. That although *** Bohl testified that her left hip pain was worse following the March 28, 2007[,] motor vehicle accident, I found no objective evidence (e.g., imaging studies or electromyographic results) to confirm her testimony.

10. To the contrary, it was my conclusion that *** Bohl suffered from failed back syndrome following her January[] 2006[,] lumbar laminotomies and foraminotomies, and that this—rather than the March 28, 2007[,] motor vehicle acci-

dent—was the sole proximate cause of her long[-]standing left hip pain."

¶ 38 State Farm responds that neither it nor Mead suggested that the "personal views" Mead expressed in the affidavit were to be construed as conclusive expert testimony, claiming instead that the trial court correctly ruled that Mead was merely reciting the factual basis supporting his dissent from the arbitration panel's determination. We are not persuaded.

¶ 39 As we have previously noted, affidavits that are appended to motions for summary judgment serve as a substitute for testimony at trial. Another way to look at this issue is to ask if this case went to trial, would Mead be permitted to opine from the witness stand along the same lines as paragraph 10 of his affidavit? Clearly not. We conclude that paragraph 10 of Mead's affidavit does not comply with Rule 191(a) because, as an attorney, Mead is not competent to testify that the sole and proximate cause of Bohl's hip pain was "failed back syndrome"—an obvious medical opinion. See *Protective Insurance Co. v. Coleman*, 144 Ill. App. 3d 682, 687, 494 N.E.2d 1241, 1246 (1986) ("In a summary judgment proceeding, an affidavit which asserts an opinion must first qualify as expert testimony").

¶ 40 We also note that in arguing that State Farm's affidavit should be entirely stricken, Bohl relies on *People v. Holmes*, 69 Ill. 2d 507, 512, 372 N.E.2d 656, 658 (1978), and *Spaetzel v. Dillon*, 393 Ill. App. 3d 806, 810, 914 N.E.2d 532, 537 (2009), for the proposition that an affidavit that seeks to explain or impeach a verdict is inadmissible. Although we agree with Bohl that *Holmes* and *Spaetzel* restate that proposition, we disagree they are applicable to the facts of this case. *Holmes* and *Spaetzel* concerned issues surrounding the impeachment of jury verdicts, whereas here, no jury verdict was rendered. Instead, we have two private parties that have

entered into a voluntary agreement to arbitrate their disputes. See *International Ass'n of Firefighters, Local No. 37 v. City of Springfield*, 378 Ill. App. 3d 1078, 1082, 883 N.E.2d 590, 593 (2008) (arbitration is far different from adjudication in that it is a system essentially structured without due process, rules of procedure, rules of evidence, or any appellate procedure).

¶ 41 Accordingly, we conclude that the trial court erred by failing to strike paragraph 10 of Mead's affidavit in support of State Farm's motion for summary judgment.

¶ 42 B. Bohl's Claim That the Trial Court Erred by Granting
Summary Judgment in State Farm's Favor

¶ 43 As previously stated, Bohl argues that the trial court erred by granting summary judgment in State Farm's favor. Specifically, Bohl contends that (1) the court's grant of summary judgment was not appropriate because no *bona fide* dispute existed in that State Farm failed to present any evidence contrary to her medical experts opinions and (2) State Farm's handling of her claim was vexatious and unreasonable because in addition to denying her claim without any contrary medical evidence to support its denial, State Farm failed to pay or reimburse medical bills it did not deny were covered by its policy. Prior to addressing Bohl's claims, we set forth our standard of review and the statute at issue.

¶ 44 1. *The Standard of Review*

¶ 45 In *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741, 744, 940 N.E.2d 1176, 1179 (2010), the Third District Appellate Court set forth the following standard of review:

"Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there

is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, [735 N.E.2d 560] (2000). Review of a trial court's ruling granting summary judgment is *de novo*. *Smithberg*, 192 Ill. 2d at 302, [735 N.E.2d 560]. However, whether an insurer's action in denying or delaying payment of a claim is vexatious or unreasonable is a question of fact, and a trial court's determination regarding such will be upheld on review unless it is an abuse of discretion. *Gaston v. Founders Insurance Co.*, 365 Ill. App. 3d 303, 325, [847 N.E.2d 523] (2006) (' "While the question of whether the insurer's action and delay is vexatious and unreasonable is a factual one, it is a matter for the discretion of the trial court. As such, the trial court's determination will not be disturbed on review unless an abuse of discretion is demonstrated in the record [Citation]." '). Thus, we note that the abuse of discretion standard of review applies even though the trial court granted summary judgment. *Gaston*, 365 Ill. App. 3d at 324-25, [847 N.E.2d 523]."

¶ 46 We note that in their respective briefs to this court, the parties dispute whether the appropriate standard of review is *de novo* or abuse of discretion. We decline, however, to address the merits of that controversy because, simply put, given the facts of this case, our conclusion would not change regardless of the standard applied.

¶ 47

2. *The Statute at Issue*

¶ 48

Section 155 of the Insurance Code, entitled "Attorney fees," provides, in part, as

follows:

"(1) In any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts:

(a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;

(b) \$60,000;

(c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action." 215 ILCS 5/155 (West 2010).

¶ 49

The question to be resolved when a suit is brought under section 155 of the Insurance Code is whether the insurance company's conduct was vexatious and unreasonable.

West Bend Mutual Insurance, 406 Ill. App. 3d at 745, 940 N.E.2d at 1179. "The relevant inquiry to determine whether an insurer's actions were 'unreasonable and vexatious' is whether it had a *bona fide* defense to the claim." *West Bend Mutual Insurance*, 406 Ill. App. 3d at 745, 940 N.E.2d at 1179-80. If a *bona fide* dispute exists regarding coverage, an insurer's delay in settling the claim will not be deemed vexatious or unreasonable. *Rhone v. First American Title Insurance Co.*, 401 Ill. App. 3d 802, 825, 928 N.E.2d 1185, 1204 (2010). "'*Bona fide*' is defined as '[r]eal, actual, genuine, and not feigned.'" *American States Insurance Co. v. CFM Construction Co.*, 398 Ill. App. 3d 994, 1003, 923 N.E.2d 299, 308 (2010) (quoting Black's Law Dictionary 177 (6th ed. 1990)).

¶ 50

3. *The Trial Court's Grant of Summary Judgment*

¶ 51

In this case, the trial court granted State Farm's motion for summary judgment because it found that no genuine issue of material fact existed and that State Farm was entitled to judgment as a matter of law. The underlying basis for that ruling was the trial court's finding that a *bona fide* dispute existed, which defeated Bohl's claims that State Farm's delay in handling her insurance claim was vexatious and unreasonable as required by section 155 of the Insurance Code. Thus, the narrow issue before us is whether the court's assessment was correct. That is, did the pleadings, affidavits, depositions, and admissions, when viewed in the light most favorable to Bohl, demonstrate that no genuine issue of material fact existed such that State Farm was entitled to summary judgment. Given the evidence presented, we disagree with the court's decision.

¶ 52

As we have already concluded, paragraph 10 of Mead's affidavit did not comply with Rule 191(a) and, therefore, cannot be considered in determining whether to grant summary

judgment. The other paragraphs of Mead's affidavit note, in pertinent part, (1) what he considers are inconsistencies in Bohl's assertions over time and (2) that Freitag documented Bohl's arthritic hip was a preexisting condition. The remaining evidence State Farm proffers in support of its motion is so scant that State Farm is reduced to making the following argument in its brief to this court to further support its claim that it was entitled to summary judgment:

"When you step on someone's foot and 15 months later the person says, 'Ouch,' reasonable minds will question whether the two events are related. It doesn't take an expert to realize that something is wrong with that scenario. As a matter of common sense, injuries tend to manifest themselves immediately or at least within a reasonable time after the accident."

¶ 53 State Farm's position is not persuasive, given that it is essentially asking this court to employ "common sense" to counter the expert testimony of two medical professionals whose opinions effectively call into doubt State Farm's claim that no genuine issues of material fact existed. In addition, contrary to State Farm's aforementioned assertion, expert testimony was required to substantiate its claim in that regard. See *Vojas v. K Mart Corp.*, 312 Ill. App. 3d 544, 551, 727 N.E.2d 397, 403 (2000) ("If the plaintiff is required to present expert testimony regarding causation of the injury at issue, the defendant must come forward with the same proof of causation of the injury by the prior injury").

¶ 54 Accordingly, we conclude that the trial court erred by granting summary judgment in State Farm's favor.

¶ 55 In so concluding, we decline to address Bohl's remaining argument that State

Farm's handling of her claim was vexatious and unreasonable. As we have previously stated, the narrow issue before us concerned the propriety of the trial court's determination that State Farm was entitled to summary judgment. Bohl now asks this court to expand our consideration and address the merits of her underlying suit as if she had filed her own motion for summary judgment that the court considered and denied. Bohl, however, filed no such motion. Therefore, because we have already concluded that the court erroneously granted summary judgment in State Farm's favor, we reverse that judgment and remand for further proceedings.

¶ 56

III. CONCLUSION

¶ 57 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 58 Reversed; cause remanded.