STATE OF MICHIGAN

COURT OF APPEALS

LINDA WHEELER,

Plaintiff-Appellant,

v

SHERRY LYNN TASKER,

Defendant-Appellee.

UNPUBLISHED
May 11, 1999

No. 205360
Oakland Circuit Court
LC No. 96-519126 NI

Before: Saad, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

In this pre-"tort-reform" automobile negligence action, plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) (no genuine issue of material fact, judgment appropriate as a matter of law). The court ruled that, as a matter of law, plaintiff's injuries did not amount to a serious impairment of body function, the threshold necessary for recovery of noneconomic damages under the Michigan no-fault insurance act. MCL 500.3135(1); MSA 24.13135(1). We affirm.

Certain revisions of the noneconomic-loss provision of the Michigan no-fault insurance act, see MCL 500.3135(2); MSA 24.13135(2), took effect two days after plaintiff filed this action. Thus the amendatory language does not affect this case. Instead we must recognize and apply *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986) as the controlling authority.

This Court reviews de novo a trial court's decision on a motion for summary disposition as a matter of law. *Miller v Farm Bureau Mutual Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996). In this instance, we must review the evidence in the light most favorable to plaintiff and determine "whether a material factual dispute exists as to the nature and extent of plaintiff's injuries, and . . . whether reasonable minds could differ regarding whether plaintiff had sustained a serious impairment of body function." *DiFranco, supra* at 38-39. "Summary judgment should only be granted when the plaintiff's claim is so clearly unenforceable as a matter of law that no factual development can possibly justify a right to recovery." *Young v Michigan Mutual Ins Co*, 139 Mich App 600, 603; 362 NW2d 844 (1984).

Under *DiFranco*, a plaintiff must prove that injuries sustained in a motor vehicle accident seriously impaired a body function. *DiFranco, supra* at 39. "The focus . . . is not on the injuries themselves, but on how the injuries affected a particular body function." *Id.* Considerations bearing on whether an impairment of body function is serious include "the extent of the impairment, the particular body function impaired, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors." *Id.* at 69-70. "An impairment need not be permanent to be serious." *Id.* at 70. That an injured party has achieved complete recovery does not negate the possibility that the party suffered a serious impairment of body function of significant duration. *Id.* at 68. Likewise, that an injured party has returned to work does not necessarily defeat a claim of serious impairment. *Id.* at 88.

Under *DiFranco*, the question whether a plaintiff has satisfied the threshold for a serious impairment of body function is ordinarily one for the trier of fact:

> The question whether the plaintiff suffered a serious impairment of body function must be submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer. This is true even when there is no material factual dispute as to the nature and extent of the plaintiff's injuries. [*Id*. at 38.]

However, where reasonable minds could not differ concerning the seriousness of the injury, the threshold issue is one of law for the court. *Id.* at 51-52.

In the present case, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because reasonable minds could differ regarding whether she suffered a serious impairment of body function. We disagree.

Uncontroverted documentary evidence shows that plaintiff sought treatment from her physician five days after the accident, complaining of "stiffness in the back of neck and upper back," and that plaintiff was diagnosed with "cervical and lumbar strain." Plaintiff saw her physician three times over a span of six months, and received physical therapy and medication. Immediately after the accident, plaintiff was diagnosed with a twenty-percent limitation in neck and back movement. Compare *DiFranco, supra* at 67 ("a person who suffers a seventy-five percent limitation in back movement has clearly suffered a serious impairment of back function"). Six weeks after the accident, the range of motion in plaintiff's neck had returned to normal, and the range of motion in her back had improved. Further, there is no indication that plaintiff's physician placed any restrictions on her job-related activities when plaintiff returned to work at a dry cleaner one month after the accident. Plaintiff testified eight months after the accident that although she continued treatment at home with medication and heating pads, she was seeking no treatment with any physician, stating "I'm better and all," but that "I just can't move and get around like I used to."

"When a motion under subrule (C)(10) is made and supported . . . , an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must . . . set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). Because in this case plaintiff has put forward no evidence indicating that any discomfort or other result of her accident significantly restricted

or otherwise impaired an important body function, we hold that reasonable minds could not but conclude from the evidence before the trial court[1] that plaintiff sustained no serious impairment of body function as a result of her accident. Accordingly, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Peter D. O'Connell

[1] Plaintiff presents an unsworn letter from a physician indicating that plaintiff may have suffered a herniated disk and a torn ligament in the knee, and that she experienced pain when performing certain activities. However, the trial court evidenced no reliance on this letter, and properly so. See *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 321; 575 NW2d 324 (1998) (an unsworn opinion letter is not competent evidence with regard to a motion for summary disposition); *SSC Associates Ltd Partnership v General Retirement System*, 192 Mich App 360, 367; 480 NW2d 275 (1991) (a court should not rely on unsworn letters in deciding motions for summary disposition, because such letters are hearsay statements of opinion). We likewise decline to consider this unsworn letter on appeal.