

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

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MILTON HICKS and MARION HICKS,

Plaintiffs-Appellants,

v

ARMANER LATIFAH MUMIN and SALIM J.  
MUMIN,

Defendants-Appellees.

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UNPUBLISHED

January 12, 2001

No. 214004

Oakland Circuit Court

LC No. 97-552168-NI

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition in this automobile negligence action. Plaintiffs contend on appeal that the trial court applied the incorrect statutory standard in determining the issue of "serious impairment of bodily function" and made the incorrect factual finding that plaintiff did not suffer serious impairment of body function. We affirm.

On appeal, a trial court's grant of summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must review the record to determine whether defendants were entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998); *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra*, 456 Mich 337; *Radke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court must rely on affidavits, pleadings, depositions, or any other documentary evidence in deciding whether a genuine issue of material fact exists. *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456, n 2; 597 NW2d (1999).

In 1995, the Legislature enacted 1995 PA 222, which served to amend several provisions of the Michigan no-fault automobile act. The amending act overturned the Michigan Supreme Court's ruling in *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986), by codifying the tort threshold injury standards of *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982), rev'd

by *DiFranco, supra*. One of the purposes of the amendment was to make the determination of threshold injury (in this case, serious impairment of body function) an issue of law rather than one of fact. *Kern v Blethen-Coluni*, 240 Mich App 333, 338; 612 NW2d 838 (2000).

Accordingly, MCL 500.3135; MSA 24.13135 now provides in pertinent part:

(1) 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.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after 120 days after the effective date of this subsection, all of the following apply:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement. However, for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury.

On appeal, plaintiffs contend that there is clearly a material factual dispute regarding the nature, and extent, and consequences of the injuries suffered by plaintiff Milton Hicks, and that these issues should be submitted to a jury. In granting defendant's motion for summary disposition, the court addressed the parties' different positions with respect to the nature and extent of plaintiff's injuries and determined that there was a factual dispute concerning the nature and extent thereof. However, the court concluded, as a matter of law, that the dispute was not material to the determination as to whether plaintiff had suffered a serious impairment of body function. MCL 500.3135(2)(ii); MSA 24.13135(2)(ii). We hold that the trial court properly construed and applied the statute.

Plaintiffs also contend that the trial court mistakenly applied the statute in holding that plaintiff could lead *a* normal life rather than whether plaintiff could lead *his* normal life. A thorough review of the trial court's opinion demonstrates that plaintiffs' contention is without merit. In its opinion the trial court held:

Although Milton Hicks has presented evidence that he continues to suffer from physical difficulty, and has shown that because his left hand can no longer grip things that he has an obviously manifested impairment of an important body

function, he has not shown that it has affected his general ability to lead his normal life. The evidence shows that Milton Hicks can do most of the things he could do before the accident. Because the evidence presented by the parties shows that Milton Hicks can generally lead a normal life, and thus does not have a serious impairment of body function, the Court finds that the defendants are entitled to judgment.

Plaintiffs argue that in the last sentence where the trial court states that “Milton Hicks can generally lead a normal life,” the trial court incorrectly applied the statute. A closer reading of the entire excerpt demonstrates that the trial court compared plaintiff’s pre-accident and post-accident lifestyles and concluded that “he can do most of the things he could do before the accident” and that plaintiff’s injuries have not affected his general ability to lead *his* normal life. Accordingly, plaintiffs’ attempt to argue form over substance is without merit.

Plaintiffs further contend that the trial court improperly determined that plaintiff Milton Hicks did not suffer a serious impairment of body function. A serious impairment of body function is defined by the statute as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7); MSA 24.13135(7). The trial court held that “Milton Hicks has presented evidence that he continues to suffer from physical difficulty, and has shown that because his left hand can no longer grip things that he has an obviously manifested impairment of an important body function.”<sup>1</sup> The trial court went on to conclude that plaintiffs failed to demonstrate that plaintiff’s objectively manifested impairment has affected his general ability to lead his normal life. Accordingly, his impairment does not rise to the threshold level of a “serious impairment of body function.”

The legislative analysis to 195 PA 222 addressed the legislative intent with respect to the definition of “serious impairment of body function:”

The expression “serious impairment of body function” must be understood in connection with the other tort thresholds, death and permanent serious disfigurement. These are high standards. It is not sensible to impose two tough barriers to lawsuits and one porous one. The expression cannot be allowed to refer to just any body function nor can it mean all body function or entire body functioning. The middle ground is to require that an important body function be impaired. Further, it should apply to the effect of the impairment on an injured person’s general ability to live a normal life and not to injuries that do not have such an impact. [House Legislative Analysis, HB 4341, December 18, 1995, p 3.]

Plaintiff’s post-accident limitations include a loss of strength in his non-dominant hand and complaints about his neck. Plaintiff testified in his deposition that his neck problem was “mostly because according to the way I put my pillow.” Plaintiff’s complaints with regard to his back

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<sup>1</sup> We believe that the trial court mistakenly used the word “obviously” instead of the word “objectively” in modifying the phrase “manifested impairment of an important body function.”

were that it remains “a little problem, not too much.”<sup>2</sup> Although plaintiff obviously still has lingering difficulties as a result of the accident, this Court agrees with the trial court that his difficulties do not rise to the high threshold level of a serious impairment of body function that affects his general ability to lead his normal life.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.

I concur in result only.

/s/ William B. Murphy

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<sup>2</sup> We do not consider plaintiff’s affidavit, which was filed after the trial court’s grant of summary disposition. *Quinto v Cross & Peters*, 451 Mich 358, 366-367 n 5; 547 NW2d 314 (1996.)