

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN D. HICKS,

Plaintiff-Appellant,

v

TERRY D. TRAMMER and SUBURBAN
MOBILITY AUTHORITY FOR REGIONAL
TRANSPORTATION, a/k/a SMART,

Defendants-Appellees.

UNPUBLISHED

January 30, 2001

No. 217237

Macomb Circuit Court

LC No. 98-000570-NI

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff filed this action to recover damages for injuries sustained in an automobile accident. The trial court dismissed his complaint, finding that plaintiff had failed to prove that his injuries met the serious impairment threshold.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10), tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

A tortfeasor is liable for noneconomic damages for automobile negligence if the tortfeasor injures another person and that person suffers "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1); MSA 24.13135(1). A serious

* Circuit judge, sitting on the Court of Appeals by assignment.

impairment of body function is defined 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). Whether a person suffered a serious impairment of body function is a question of law for the court if there is no factual dispute about the nature and extent of the plaintiff’s injuries or there is a factual dispute but it is not material to whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a); MSA 24.13135(2)(a). Because the statutory definition of serious impairment of body function is the same as the definition adopted in *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982), it is appropriate to refer to *Cassidy* and cases decided thereunder in deciding this case. *Kern v Blethen-Coluni*, 240 Mich App 333, 342; 612 NW2d 838 (2000).

Giving plaintiff the benefit of the doubt, his muscle spasms and numbness in his extremities were objectively manifested injuries that impaired important body functions, i.e., moving his neck and sleeping without interruption.¹ *Bennett v Oakley*, 153 Mich App 622, 630; 396 NW2d 451 (1986); *Harris v Lemicex*, 152 Mich App 149, 153-154; 393 NW2d 559 (1986). However, these impairments were not serious. The spasms were noted during only one doctor’s office visit, the resultant limited range of motion was minimal, and the range of motion problem was resolved within a month. There is no evidence that the discomfort from the numbness, which occasionally occurred during day time, prevented him from using his hands or legs, or that these sleep interruptions prevented him from doing anything he desired. Overall, these injuries had no appreciable effect on plaintiff’s life other than to cause him to miss one day of work and a hunting trip. While plaintiff himself restricted his activities, he admittedly could do everything he wanted to do, including working, driving, lifting, working around the house, shopping, sailing, and going out socially. Therefore, any injuries did not affect his ability to lead a normal life. *Franz v Woods*, 145 Mich App 169, 177; 377 NW2d 373 (1985); *Denison v Garrison*, 145 Mich App 516, 520; 378 NW2d 532 (1985); *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984). Thus, the trial court did not err in concluding that plaintiff’s injuries did not meet the serious impairment threshold.

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

¹ While plaintiff certainly had objective manifestations of injury from a previous accident, there is no evidence in the record to show that those injuries were aggravated by the accident at issue here or that plaintiff’s present symptoms are related to his old injuries.