

STATE OF MICHIGAN
COURT OF APPEALS

TEISHA PEOPLES,

Plaintiff-Appellant,

v

SONJA LYNNISE HALTON and LORETTA
LOUISE HALTON,

Defendants-Appellees.

UNPUBLISHED

July 6, 2001

No. 220987

Wayne Circuit Court

LC No. 98-803199-NI

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We remand for further proceedings consistent with this opinion.

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition in this auto negligence case because she produced sufficient evidence of a serious impairment of body function. We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Furthermore, absent "an outcome-determinative genuine factual dispute, the issue of threshold injury is now a question of law" for the trial court, which this Court reviews de novo on appeal. *Kern v Blethen-Coluni*, 240 Mich App 333, 341-342; 612 NW2d 838 (2000); MCL 500.3135(2)(a).

Pursuant to MCL 500.3135(1), a person is subject to liability for noneconomic damages caused by an automobile accident if the injured party suffers "death, serious impairment of body function, or permanent serious disfigurement." *Hardy v Oakland Co*, 461 Mich 561, 565; 607 NW2d 718 (2000); *Churchman v Rickerson*, 240 Mich App 223, 226; 611 NW2d 333 (2000). A serious 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); *May v Sommerfield*, 239 Mich App 197, 201; 607 NW2d 422 (1999). Whether a person has suffered serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries or, if there is such a dispute, it is not material to the determination as to whether the plaintiff suffered a serious impairment of body function. *Id.*; MCL 500.3135(2)(a). 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.” MCL 500.3135(2)(a)(ii); *Churchman, supra* at 226.

A trial court cannot determine whether a plaintiff suffered a serious impairment of body function as a matter of law without first making the factual findings required under MCL 500.3135(2)(a). *May, supra* at 202. Absent the trial court’s factual findings under that statutory section, we are unable to decide the merits of plaintiff’s appeal. *Id.* Because the trial court failed to make the necessary factual findings and granted defendants’ motion without explanation, we remand for further proceedings.

On remand, we instruct the trial court to make factual findings concerning whether a factual dispute exists with respect to whether plaintiff suffered a serious impairment of body function, considering the nature and extent of plaintiff’s injuries, consistent with MCL 500.3135(2)(a). When determining the nature of plaintiff’s injuries, the trial court should make appropriate findings concerning whether there is a factual dispute with respect to whether plaintiff has an objectively manifested impairment and, if so, whether an important body function is impaired. *May, supra* at 202-203. When determining the extent of plaintiff’s injuries, the trial court should make appropriate findings concerning whether a factual dispute exists with respect to whether the impairment affects plaintiff’s general ability to lead her normal life. *Id.* at 203.

We hold that the trial court shall base its factual findings on the record as it existed at the time the trial court granted defendants’ motion for summary disposition. The parties shall not be permitted to introduce additional evidence relative to this factual question, and the trial court need not entertain oral argument on the issue. Further, we hold that the parties may submit written briefs to the trial court addressing changes in the law that may have occurred since the trial court granted defendants’ motion for summary disposition. If the parties choose to submit such briefs, they must do so within twenty-one days from the date of this opinion. Within twenty-eight days from the date of this opinion, the trial court shall enter a written opinion containing its findings of fact.

Remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald

/s/ Kathleen Jansen