

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA PERALES,

Plaintiff-Appellant,

v

PETE PARTIN,

Defendant-Appellee.

UNPUBLISHED

July 13, 2001

No. 223343

Genesee Circuit Court

LC No. 98-064317-NI

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

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this automobile negligence case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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 subrule (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, 455; 597 NW2d 28 (1999).

Because plaintiff filed this action in December 1998, it was subject to MCL 500.3135 as amended. MCL 500.3135(2). That statute provides that a person is subject to tort liability for automobile negligence if the injured person suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). 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). 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 the determination whether the plaintiff suffered a serious impairment of

body function. MCL 500.3135(2)(a). Because “the Legislature overturned the Supreme Court’s *DiFranco*¹ decision by codifying the tort threshold injury standards of *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982),” and the statutory definition of serious impairment of body function is the same as that adopted in *Cassidy*, it is appropriate to refer to *Cassidy* and cases decided thereunder in deciding this case. *Kern v Blethen-Coluni*, 240 Mich App 333, 338-342; 612 NW2d 838 (2000).

Plaintiff may have had an injury, that being tendinitis. However, there were no physical abnormalities which could account for plaintiff’s complaints of pain and tenderness, and it is the injuries, not the pain, that must be medically substantiated through objective manifestation. See *Guerrero v Schoolmeester*, 135 Mich App 742, 748; 356 NW2d 251 (1984). Medical findings of tenderness and limited flexion do not rise to the level of objective manifestation. *Franz v Woods*, 145 Mich App 169, 175; 377 NW2d 373 (1985); *Flemings v Jenkins*, 138 Mich App 788, 790; 360 NW2d 298 (1984). Plaintiff testified at deposition that the pain hampered her ability to stand or drive for long periods of time, but “[a] limitation self-imposed because of real or perceived pain is not objective manifestation.” *Salim v Shepler*, 142 Mich App 145, 149; 369 NW2d 282 (1985). Therefore, the trial court did not err in ruling that plaintiff did not meet the serious impairment threshold.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy

¹ *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986).