

STATE OF MICHIGAN
COURT OF APPEALS

WILSON MASSEY and RITA MASSEY,

Plaintiffs-Appellants,

V

PHILLIP MICHAEL GARBACZ and
AUTO GLASS DISTRIBUTORS, INC.,

Defendants-Appellees.

UNPUBLISHED

August 24, 2001

No. 221577

Macomb Circuit Court

LC No. 98-002450-NI

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This Court reviews a decision regarding a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion under MCR 2.116(C)(10), the court considers the affidavits, pleadings, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. Summary disposition may be granted if the affidavits and other documentary evidence show that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law. *Smith, supra* at 454-455.

MCL 500.3135(1) provides:

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. [Emphasis supplied.]

The issue whether an injured person has suffered a serious impairment of body function is a question of law for the court if (1) there is no factual dispute concerning the nature and extent of the person's injuries or (2) 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. MCL 500.3135(2)(a)(i) and (ii).

Here, there is a factual dispute concerning the cause of plaintiff Wilson Massey's injuries. Defendants maintain that the injuries are age-related, while plaintiffs claim they are due to the accident. This dispute, however, is not material to the determination whether Wilson Massey suffered a serious impairment of body function. The court properly decided the question as a matter of law. Moreover, the court correctly concluded that Wilson Massey did not suffer a serious impairment of body function. A serious impairment of body function is an objectively manifested impairment of an important body function that affects the person's general ability to lead a normal life. MCL 500.3135(7). Although Wilson Massey can no longer perform certain activities, his general ability to lead a normal life is unaffected. Given these circumstances, the trial court did not err in concluding that plaintiffs failed to satisfy the injury threshold. *Miller v Purcell*, ___ Mich App ___; ___ NW2d ___ (Docket No. 221473, issued 6/1/01); *Mekler v Bigham*, 147 Mich App 716, 720; 383 NW2d 95 (1985); *Franz v Woods*, 145 Mich App 169, 177; 377 NW2d 373 (1985).

Affirmed.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Jessica R. Cooper