STATE OF MICHIGAN

COURT OF APPEALS

TEISHA PEOPLES, Plaintiff-Appellant,	UNPUBLISHED November 20, 2001
v	No. 220987 Wayne Circuit Court
SONJA LYNNISE HALTON and LORETTA LOUISE HALTON, Defendants-Appellees.	LC No. 98-803199-NI AFTER REMAND

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

PER CURIAM.

This auto negligence case returns to us after remand to the trial court for further factual findings. On remand, the trial court determined that a factual dispute existed concerning whether plaintiff had suffered a serious impairment of body function as a result of the underlying auto accident. Therefore, the trial court ruled that defendants were not entitled to summary disposition. We affirm.

Plaintiff sued defendants for personal injuries that allegedly arose from a minor auto accident. Defendants moved for summary disposition, arguing that plaintiff had not satisfied the threshold requirements for recovery of noneconomic damages. MCL 500.3135(1). Although the trial court initially granted defendants' motion for summary disposition, it failed to explain the basis for that decision. Plaintiff appealed as of right, arguing that the trial court committed error requiring reversal because she had produced sufficient evidence of a threshold injury. We remanded with instructions for the trial court to make the factual findings required under MCL 500.3135(2)(a).[1]

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."

[1] *Peoples v Halton*, unpublished opinion per curiam of the Court of Appeals, issued July 6, 2001 (Docket No. 220987).

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 trial 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.

In its opinion dated October 12, 2001, the trial court outlined specific factual findings regarding plaintiff's injuries.[2] Perhaps most importantly, the trial court noted the affidavit provided by one of plaintiff's treating physicians, Dr. Gunabalan, which opined that "there is a serious neurological injury, specifically that [plaintiff] is suffering from a closed head injury and traumatic brain injury sustained in the automobile accident on June 8, 1996." The trial court concluded that Dr. Gunabalan's affidavit satisfied the requirements of MCL 500.3135(2)(a)(ii), and that a genuine issue of material fact did exist with respect to whether plaintiff suffered a serious impairment of body function. Therefore, the trial court concluded that summary disposition in favor of defendants was not warranted.

We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). In auto negligence cases, 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).

We agree with the trial court that Dr. Gunabalan's affidavit satisfied the requirements of MCL 500.3135(2)(a)(ii) and raised a question of fact for the jury regarding threshold injury. See *Churchman*, *supra*. We note defendants' argument that Dr. Gunabalan's affidavit is "completely worthless" because the doctor failed to take certain information into account and because other doctors have offered contradictory opinions. However, defendants' argument simply goes to the weight and credibility of Dr. Gunabalan's testimony, and further illustrates that a question of fact exists for the jury.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen

McDonald, J. did not participate.

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[2] In our earlier opinion, we instructed the trial court to base its factual findings on the record as it existed at the time the trial court issued its first decision, granting defendants' motion for summary disposition. Thus, we precluded the parties from introducing additional evidence. In its opinion dated October 12, 2001, the trial court indicated that it based its decision on the original record. Therefore, we have no reason to conclude that the trial court considered the brief submitted by plaintiff on remand, through which plaintiff attempted to enlarge the record. Likewise, we did not consider the additional information set forth in plaintiff's supplemental trial court brief.