

STATE OF MICHIGAN  
COURT OF APPEALS

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VALENTINA NECHOVSKI,

Plaintiff-Appellant,

V

EDWARD LEO GUTT and VALERIE GUTT,

Defendants-Appellees.

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UNPUBLISHED

April 26, 2002

No. 228668

Macomb Circuit Court

LC No. 99-003106-NI

Before: Gage, P.J., and Griffin and Buth\*, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to recover damages for injuries sustained in an automobile accident. The trial court dismissed the complaint, finding that her injuries did not meet the serious impairment threshold.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). 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, 455; 597 NW2d 28 (1999).

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

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

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 statutory definition of serious impairment of body function is the same as that 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 resolving this case. *Kern v Blethen-Coluni*, 240 Mich App 333, 342; 612 NW2d 838 (2000).

Every diagnostic tool used by the various evaluating physicians, including x-ray, MRI, EMG and an arterial Doppler exam of both arms, yielded normal results. Further, the numerous physical exams by a number of physicians failed to support a finding of any objectively manifested injury except for one physician. Dr. Carla Morton noted some tightness of the back muscles upon palpitation. That this one isolated finding would give rise to a question of fact whether plaintiff had an objectively manifested injury is tenuous at best.

However, plaintiff's injury did not affect her general ability to lead her normal life. The evidence showed that she could engage in the everyday activities of living. She missed some time from school, but did graduate, albeit six months late. While in school, she declined to participate in sports because she could not perform as well as she once had. A self-imposed restriction on athletic activities does not affect one's general ability to lead a normal life where one can still work and engage in social and everyday activities. *Franz v Woods*, 145 Mich App 169, 177; 377 NW2d 373 (1985); *Denson v Garrison*, 145 Mich App 516, 520; 378 NW2d 532 (1985). Plaintiff voluntarily quit her waitress job. Although she did not work again, there was no evidence that she was physically unable to work. Rather, she did not have to because her father supported her. Based on the evidence presented, we conclude that plaintiff's injury did not affect her general ability to lead her normal life and therefore the trial court did not err in granting defendants' motion. *Miller v Purcell*, 246 Mich App 244; 631 NW2d 760 (2001).

Affirmed.

/s/ Hilda R. Gage  
/s/ Richard Allen Griffin  
/s/ George S. Buth