

STATE OF MICHIGAN
COURT OF APPEALS

ROSIE FORD and ERNEST FORD,

Plaintiffs-Appellants,

V

SHIRLEY WARMACK,

Defendant-Appellee.

UNPUBLISHED

April 26, 2002

No. 229882

Wayne Circuit Court

LC No. 99-925030-NI

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

PER CURIAM.

Plaintiffs appeal by right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff Rosie Ford 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 and extent of the plaintiff's injuries or there is a factual dispute but it is not material to the

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

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).

The evidence showed that plaintiff had been suffering from radiating low back pain and was in physical therapy prior to the accident. After the accident, she complained of increased pain. She was eventually found to have bulging discs and nerve damage, but there is no evidence that those injuries were causally connected to the accident. The unsworn statements of plaintiff's doctors were not proper affidavits, *Holmes v Michigan Capital Medical Ctr*, 242 Mich App 703, 711-712; 620 NW2d 319 (2000), and thus were insufficient to create a genuine issue of fact. *Marlo Beauty Supply, Inc v Farmers, Ins Group of Cos*, 227 Mich App 309, 321; 575 NW2d 324 (1998). In addition, a comparison of plaintiff's lifestyle before and after the accident showed virtually no difference; all aspects of her life had been severely restricted due to the pain before the accident as well as after. Thus, the trial court did not err in concluding that whatever injuries plaintiff suffered in the accident did not affect her general ability to lead her normal life. *Miller v Purcell*, 246 Mich App 244; 631 NW2d 760 (2001). While plaintiff's doctors expressed opinions to the contrary, their unsworn statements were not admissible. In addition, the issue was one of law for the court, MCL 500.3135(2)(a), and a party's experts are not qualified to interpret and apply the law. *Reeves v Kmart Corp*, 229 Mich App 466, 475; 582 NW2d 841 (1998).

Affirmed.

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