

STATE OF MICHIGAN
COURT OF APPEALS

PAUL D. WEISER,

Plaintiff-Appellant,

v

CAROLYN Y. REED,

Defendant-Appellee.

UNPUBLISHED

November 26, 2002

No. 236968

Macomb Circuit Court

LC No. 00-003237-NI

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

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

Plaintiff was thrown from his bicycle when defendant's car struck it. He filed this action to recover damages for injuries sustained in the accident. The trial court dismissed his complaint, finding that plaintiff's 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 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 deciding this case. *Kern v Blethen-Coluni*, 240 Mich App 333, 342; 612 NW2d 838 (2000).

Plaintiff fractured several teeth in the accident and suffered from intense headaches afterwards. Considering the evidence and all reasonable inferences derived therefrom, there was at least a question of fact whether plaintiff suffered objectively manifested injuries that impaired an important body function. However, plaintiff failed to present any evidence to show that the impairment of his body function was serious, i.e., that it significantly affected his general ability to lead his normal life. *Miller v Purcell*, 246 Mich App 244, 249-250; 631 NW2d 760 (2001). Plaintiff did not present any testimony by way of deposition or affidavit regarding the effects of his injuries. While the dental problems and treatment may have somewhat affected plaintiff's ability to eat to some extent, there is no evidence that his general ability to lead a normal life was significantly affected. When consulting a physician, plaintiff described his headaches as incapacitating, but there is no evidence regarding the extent, duration, or frequency of this incapacitation. Because plaintiff failed to present evidence demonstrating the existence of a genuine issue of material fact, the trial court did not err in granting defendant's motion. MCR 2.116(G)(4).

We affirm.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski