

STATE OF MICHIGAN
COURT OF APPEALS

MARINA YELIZAROV,

Plaintiff-Appellant,

v

JANET JEAN STYLES,

Defendant-Appellee.

UNPUBLISHED

December 13, 2002

No. 239740

Oakland Circuit Court

LC No. 01-030209-NI

Before: Griffin, P.J., and White and Murray, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right from a trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

I. Basic Facts and Procedural History

Plaintiff was involved in an automobile accident with defendant on May 22, 2000. Plaintiff filed this action to recover damages for injuries sustained in that accident. In her complaint, plaintiff alleged that as a result of the accident she suffered a serious impairment of body function and was entitled to noneconomic damages pursuant to MCL 500.3135.

Thereafter, defendant filed a motion for summary disposition, arguing that plaintiff did not suffer a serious impairment of body function or a permanent serious disfigurement as a result of the accident, and therefore, summary disposition was appropriate. The trial court agreed, finding that plaintiff had failed to prove that her injuries met the statutorily imposed serious impairment threshold. Rather, the trial court found that plaintiff's injuries did not affect her general ability to lead a normal life. As a result, the trial court granted defendant's motion for summary disposition and the case was dismissed.

II. Standard of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999) the Supreme Court, quoting

from *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards to apply in reviewing a motion brought pursuant to MCR 2.116(C)(10):

“In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

“In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Glove Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).”

III. Analysis

On appeal, plaintiff argues that the trial court erred in granting defendant’s motion for summary disposition because plaintiff submitted sufficient evidence that her injuries impacted her normal life. We disagree. “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 a body function, or permanent serious disfigurement.” MCL 500.3135(1). “Serious impairment of body function” is statutorily 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). Further, the issue of whether an injured person has suffered serious impairment of body function is a question of law for the court if the court finds either of the following:

- (i) There is no factual dispute concerning the nature and extent of the person’s injuries.
- (ii) 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).]

As this Court has observed, by enacting the foregoing amendments, the Legislature returned the determination of threshold injury to the trial court. *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), citing *Kern v Blethen-Coluni*, 240 Mich App 333, 339; 612 NW2d 838 (2000). At the same time, the Legislature overturned the Supreme Court's decision in *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986) by codifying the tort threshold injury standards of *Cassidy v McGovern*, 415 Mich 483; 300 NW2d 22 (1982), overruled by *DiFranco, supra. Kern, supra* at 338. Thus, because the Legislature has returned the standards of *Cassidy*, *Cassidy* and its progeny are instructive in this case. *Id.* at 342.

In this case, it appears that plaintiff submitted sufficient objective evidence of a serious impairment of a body function, but failed to establish that a genuine issue of disputed fact existed with regard to whether her injuries affected her general ability to lead her normal life. MCL 500.3135(7). Assuming that plaintiff's injury is objectively manifested, we are satisfied that plaintiff has not suffered a serious impairment of body function because her general ability to lead her normal life has not been affected by her injuries. Plaintiff claims that she suffers from post-traumatic headaches and neck and arm/shoulder pain. Plaintiff alleges that these injuries have disrupted her ability to lead her normal life in that she requires assistance in doing household chores, such as grocery shopping, vacuuming, and cleaning. She has difficulty lifting and bathing her baby, playing on the floor with her children, walking for recreational purposes, transporting her children to sporting activities, and enjoying recreational reading.

However, the record establishes that plaintiff is able to work forty hours per week as an accountant for Technosoft Corporation, missing only one day of work because of the accident. Although plaintiff requires some assistance in performing household chores, she is able to cook, do some laundry, clean, and vacuum. Plaintiff is able to fold clothes and put them away and change the linens. Plaintiff is also able to do some grocery shopping. Plaintiff was unable to articulate any personal activities that she is unable to do, other than recreational reading,¹ due to her impairment. Furthermore, since the accident, plaintiff enjoyed a week vacation in Cancun, which included physical activity such as swimming. Although plaintiff has experienced some minor lifestyle changes since the accident and may require some assistance in performing some household chores, the facts do not establish that her ability to lead her normal life has been significantly altered by her injuries. See *Miller, supra* at 249-250. Compare *Mekkir v Bigham*, 147 Mich App 716, 720; 383 NW2d 95 (1985); *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984); and *Flemings v Jenkins*, 138 Mich App 788, 790; 360 NW2d 298 (1984) (all relying on *Cassidy, supra*). Accordingly, because plaintiff failed to meet the threshold of § 3135, the trial court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ Richard Allen Griffin
/s/ Helene N. White
/s/ Christopher M. Murray

¹ It should also be noted that plaintiff stated that she *sometimes* gets headaches when she reads, but the headaches have occurred less frequently with physical therapy.