

STATE OF MICHIGAN  
COURT OF APPEALS

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HEATHER PETTIE,

Plaintiff-Appellant,

v

WILLIAM CARL BROCK, JR.,

Defendant-Appellee.

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UNPUBLISHED  
February 28, 2003

No. 238713  
Oakland Circuit Court  
LC No. 2000-028010-NO

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

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

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. Summary disposition is appropriate 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). 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). 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).

The evidence was sufficient to create an issue of fact whether plaintiff had objectively manifested injuries that affected important body functions. An MRI showed bulging discs in plaintiff's lower spine and one of several EEGs showed abnormal brain function. However, the evidence presented in connection with defendant's motion did not establish that plaintiff's injuries were serious, i.e., that they had a significant impact on her general ability to live a normal life. *Miller v Purcell*, 246 Mich App 244, 249-250; 631 NW2d 760 (2001); *Kern, supra* at 340. Plaintiff was still able to work, drive, socialize, travel, take care of herself, her children and her home, and otherwise engage in the normal activities of life. She slept more, was not quite as active as before, required some assistance with housework, and had trouble balancing her checkbook. Given such evidence, the circuit court did not err in finding that plaintiff's injuries were not serious.

In general, a party moving for reconsideration "must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). Whether to grant a motion for reconsideration is a matter left to the trial court's discretion. *Cole v Ladbrooke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000). The trial court's ruling is reviewed for an abuse of discretion, which "exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

After the circuit court granted defendant's motion, plaintiff consulted another doctor, a neurologist, who provided a report and affidavit arguably sufficient to automatically establish a jury-submissible question regarding plaintiff's closed-head injury. MCL 500.3135(2)(a)(ii). Plaintiff then moved for reconsideration on the basis of that newly obtained evidence. This Court "can find no abuse of discretion in the denial of a motion for reconsideration that rests on testimony that could have been presented the first time the issue was argued." *Churchman, supra* at 233. While newly discovered evidence may entitle a party to relief from a final judgment or order, MCR 2.612(C)(1)(b), such relief is not available unless the movant shows that she could not, with reasonable diligence, have produced the evidence earlier. *South Macomb Disposal Authority v American Ins Co*, 243 Mich App 647, 655; 625 NW2d 40 (2000). Plaintiff here made no such showing. Accordingly, we find no abuse of discretion.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra