

STATE OF MICHIGAN
COURT OF APPEALS

GLEND A FARLEY,

Plaintiff-Appellant,

v

STANLEY W. JEREMIAH and MARY G.
MACCREADY,

Defendants-Appellees.

UNPUBLISHED
February 15, 2005

No. 251160
Hillsdale Circuit Court
LC No. 02-000820-NI

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

In this automobile-negligence action, plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was in an automobile accident in January 2000. Defendant Mary MacCready was driving the other car, which was owned by defendant Stanley Jeremiah. Plaintiff commenced this action on November 1, 2002, asserting that the accident left her with injuries constituting a serious impairment of bodily function. On defendants' motion for summary disposition, the trial court held that the evidence was legally insufficient to prove either that plaintiff's injuries were causally related to the accident, or that she had suffered a serious impairment of bodily function.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. *Decker v Flood*, 248 Mich App 75, 81; 638 NW2d 163 (2001). The court considers the pleadings, affidavits, and other evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Id.* "The court should grant the motion only if the affidavits or other documentary evidence show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

I. Causal Relationship

By plaintiff's own account, she reported to her doctor, some four months after the accident, that she had been free of symptoms for a week, and thereafter returned to the work force. Plaintiff next reports seeking medical treatment nearly a year after returning to work. Plaintiff's attorney admitted that he had no medical documentation stating the opinion that plaintiff's current condition was a result of the traffic accident.

The trial court observed that:

we have her within months she's released for work . . . and works for ten months doing assembly work in a factory. Apparently never complaining of any problems. Not to the effect that it affected general ability to operate on a daily basis until she trips on a skid, falls, and is off work for a period of time.

Plaintiff does not dispute these factual particulars, but argues generally that summary disposition is highly disfavored in negligence cases, citing *Miller v Miller*, 373 Mich 519; 129 NW2d 885 (1964). While that case does stand for the proposition that negligence ordinarily presents a question of fact, not law, it also reiterates that dismissal by the court is proper where there is no genuine issue of material fact "relevant to the existence of an asserted duty." *Id.* at 524. Plaintiff, otherwise, simply points to her own representations to the effect that she continued to suffer from headaches and neck pain even during the several months during which she did not seek treatment.

Causation is one of the elements of any negligence claim, as reflected in the no-fault act itself. MCL 691.1407(2); see also *Schuster v Sallay*, 181 Mich App 558, 562; 450 NW2d 81 (1989). Because plaintiff's argument on the question of causation is supported by no medical evidence to place in doubt the trial court's conclusion that she failed to show a causal link between her present injuries and the accident that took place nearly three years earlier, affirmance of the result below is proper.

II. Serious Impairment of Bodily Function

MCL 500.3135(1) provides that 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 body function, or permanent serious disfigurement." Subsection (7) states that "'serious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." Subsection (2) establishes that whether a person has suffered serious impairment of a body function is a question of law for the court, where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered serious impairment of a body function. Accordingly, the issue should be submitted to the jury only when the court determines that an outcome-determinative factual dispute exists. *Miller v Purcell*, 246 Mich App 244, 247, 631 NW2d 760 (2001). The focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body. *Id.* at 249.

The trial court acknowledged that a factual dispute existed regarding the nature and extent of plaintiff's injuries, but concluded that the dispute was not material to the determination whether she had suffered a serious impairment of a body function. We agree with the trial court

that no factual dispute that is material to the determination of whether plaintiff suffered a serious impairment of body function.

If the impairment was objectively manifested, the court must then decide whether the impairment affected the plaintiff's general ability to lead a normal life. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). In determining whether an injury constitutes impairment of an important body function, a court should consider the extent of the injury, the treatment required, the duration of the disability, the extent of residual impairment and the prognosis for eventual recovery. *Id.* at 133. In assessing the extent of the injury, a court should compare the plaintiff's lifestyle before and after the injury. *Id.* at 132. An injury need not be permanent to be an impairment of an important body function, *Id.* at 135, but if the person's general ability to lead his normal life has not been affected, he has not suffered a serious impairment, *Id.* at 130.

As noted, by plaintiff's own account, she reported to her doctor, some four months after the accident, that she had been symptom free for a week, and thereafter returned to the work force. Plaintiff asserts that she had been advised to avoid neck-straining activities, is unable to sit in a car for long trips, and suffers from dizziness, short-term memory loss, and disabling headaches. Plaintiff additionally complains that she is no longer able to play horseshoes, crochet, sew, do heavy housework, can produce, ride her bicycle, or play actively with her grandchildren. Looking at plaintiff's life as a whole, before and after the accident, even if as the result of injuries received in the automobile accident, she feels pain that limits her ability to do housework, pick up her grandchildren, knit, or crochet, this does not reach the threshold for establishing serious impairment of bodily function for purposes of the no-fault act, because the results, despite their limitations, do not affect her "general ability to conduct the course of his normal life." *Kreiner, supra* at 136-138. Plaintiff likewise complains of pain and inconvenience, but not a serious affect on her ability to lead a normal life. For the above reasons, we find on review de novo that summary disposition was proper for this reason as well.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen