

STATE OF MICHIGAN  
COURT OF APPEALS

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FRANCES SMITH,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR  
REGIONAL TRANSPORTATION, d/b/a  
SMART, and LAVERNE DOOLEY,

Defendants-Appellees.

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UNPUBLISHED

June 21, 2005

No. 253128

Wayne Circuit Court

LC No. 02-242661-NI

Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This case arises out of a collision between plaintiff's car and a bus that was owned by defendant SMART and operated by defendant Laverne Dooley in Detroit. Prior to this accident, plaintiff had slipped on a flight of stairs and injured her shoulder. At the time of the automobile accident, plaintiff was attending physical therapy and taking medication. On the day of the automobile accident, plaintiff's injured arm was in a sling. During the collision, plaintiff alleges that she heard a "pop" in her shoulder and suffered additional injury to her shoulder.

We review a trial court's decision on a motion for summary disposition de novo. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). On a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004). The burden then shifts to the nonmoving party to establish that a genuine issue of fact exists. *Quinto, supra* at 362. The nonmovant may not rest upon mere allegations or denials in the pleadings to satisfy the burden of proof on a dispositive issue, but must, by documentary evidence, present specific facts showing that there is a genuine issue for trial. *Id.* at 362-363. A summary disposition motion pursuant to MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d

468 (2003). When deciding a motion for summary disposition, we must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. MCR 2.116(G)(5); *Miller, supra* at 246.

Pursuant to Michigan's no-fault insurance act, MCL 500.3101 *et seq.*, defendants may be subject to "tort liability for noneconomic loss caused by [their] 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." 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." *Kreiner, supra* at 129, applying MCL 500.3135(7).

In deciding whether an injured person has suffered a serious impairment of body function, we must determine whether there is a factual dispute concerning the nature and extent of the injuries. *Kreiner, supra* at 131-132. Next, we must decide if an important body function of plaintiff has been impaired and whether such impairment has been objectively manifested. *Kreiner, supra* at 132. Finally, the court must determine if the impairment affects plaintiff's general ability to lead his or her normal life. *Kreiner, supra* at 132. This analysis requires:

a multi-faceted inquiry, comparing the plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of [the] plaintiff's overall life. Once this is identified, the court must engage in an objective analysis regarding whether any difference between [the] plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's "general ability" to conduct the course of his life. Merely "any effect" on the plaintiff's life is insufficient because a de minimis effect would not, as objectively viewed, affect the plaintiff's "general ability" to lead his life. [*Id.* at 132-133 (emphasis in original).]

The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) on the ground that plaintiff failed to demonstrate a sufficient change in lifestyle after the automobile accident.<sup>1</sup> The *Kreiner* Court set forth the following non-exhaustive list of objective factors that may assist courts in evaluating whether a plaintiff's "general ability" to conduct the course of her normal life has been affected: "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Kreiner, supra* at 133. No one factor alone is meant to be dispositive; the totality of the circumstances must be considered on a case-by-case basis. *Id.* at 134, 134 n 19.

At the time of plaintiff's slip and fall accident, she was a sixty-nine year old retiree who enjoyed taking care of her grandchildren, attending church, dancing, and traveling. Plaintiff's slip and fall accident caused a sprained shoulder, for which her doctor prescribed pain

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<sup>1</sup> Defendants conceded, for summary disposition purposes, that plaintiff had an objectively manifested impairment of body function, and therefore the disputed issue was whether the impairment affected plaintiff's ability to lead her life.

medication and physical therapy. Plaintiff continued to take pain medication and attend physical therapy at the time of the automobile accident. Plaintiff testified that after the slip and fall accident, she could no longer do any of the activities listed above. In addition, she could no longer cook, do housework, drive, or bathe and dress herself without assistance.

On the day of the automobile accident, plaintiff's right arm was in a sling. With the exception of the day of the automobile accident, plaintiff did not drive for five to six months after the slip and fall accident. At her deposition, plaintiff was asked what lifestyle changes had occurred after the automobile accident, when compared with her lifestyle before the accident. Plaintiff identified all the tasks and activities that she could no longer perform or participate in after the slip and fall accident. In response to questioning by defense counsel, plaintiff stated that she was "unable" to do the same activities before and after the automobile accident. In addition, when questioned by her own counsel, plaintiff was asked if she was able to attend to her personal grooming the morning of the automobile accident, and she responded, "No, I really couldn't do it . . . before the accident and after the accident I wasn't able to do it." Also, when asked if there was a change in the way she was able to move her shoulder after the automobile accident, plaintiff responded, "[I]t was still the same. I couldn't reach, I couldn't lift." In addition, plaintiff testified that she was now able to drive with her left arm, she has begun to attend church once or twice a month, and she was able to attend a funeral in Alabama a week before the deposition. These are all activities plaintiff testified that she was no longer able to do after the slip and fall accident. Therefore, plaintiff's lifestyle before and after the automobile accident were not different. We cannot say that the accident affected her ability to lead her normal life. *Kreiner, supra* at 132-133.

Plaintiff also presented a disability certificate. Although the certificate stated that plaintiff was disabled from performing "housework" and "caring for [her] personal needs," plaintiff failed to provide any additional documentary evidence to show that her current disabilities represented a change in her lifestyle before the automobile accident. Viewing the evidence in a light most favorable to plaintiff, she failed to meet the burden of establishing that there was a genuine issue of material fact for trial. Accordingly, the trial court did not err in granting defendants summary disposition.

Affirmed.

/s/ Hilda R. Gage  
/s/ William C. Whitbeck  
/s/ Henry William Saad