

STATE OF MICHIGAN  
COURT OF APPEALS

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BOBBIE JEAN SMITH as next friend of  
CENTRA SMITH,

UNPUBLISHED  
October 18, 2005

Plaintiff-Appellant,

v

No. 252650  
Wayne Circuit Court  
LC No. 02-213093-NI

ERNEST BEGIN,

Defendant-Appellee.

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Before: Cooper, P.J., and Fort Hood and R.S. Gribbs\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a stipulated order of dismissal in this automobile negligence action. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff asserts that the trial court erred in granting defendant's partial motion for summary disposition based on MCL 500.3135. We disagree. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). This Court reviews a trial court's determination regarding a motion for summary disposition de novo. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

Plaintiff argues on appeal that she presented sufficient evidence to the trial court to create an issue of fact for trial regarding whether the motor vehicle accident aggravated her daughter's Osgood-Schlatter condition thus qualifying as a serious impairment of body function under MCL 500.3135. Indeed, the Michigan Supreme Court has held that a plaintiff may recover noneconomic damages under MCL 500.3135 if the trauma caused by the accident triggered

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

symptoms from a preexisting condition. See *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000) (“Regardless of the preexisting condition, recovery is allowed if the trauma caused by the accident triggered symptoms from that condition.”). However, plaintiff must nevertheless demonstrate that the aggravated injury satisfies the dictates of MCL 500.3135.

Under the no-fault act, “[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.” MCL 500.3135(1). The act defines “serious impairment of body function” 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). A serious impairment of body function is “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). For an impairment to be objectively manifested, there must be a medically identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries. MCL 500.3135(2)(a). A question of law for the court is also presented if there is a factual dispute concerning the nature and extent of the injuries, but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. *Id.* Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

To determine whether the impairment of the important body function is serious, the court should consider factors such as the extent of the injury, the treatment required, the duration of the disability, the extent of residual impairment, and the prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). When evaluating the extent of the injury, a court may compare the plaintiff’s lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Applying these legal principles to the instant case, we conclude that the minor child’s injury did not affect her general ability to lead her normal life. The evidence<sup>1</sup> established that before the accident, the minor child enjoyed being a majorette in the school band, participated in physical education, and desired to be cheerleader. Following the accident, the minor child restricted her physical activities because of the stiffness and lack of mobility in her knee. However, the minor child later joined the cheerleading squad and was able to participate in most movements. Some movements were altered to avoid injury to her knees. She had minimal medical treatment, and her restrictions were slight and for unspecified periods of time. She

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<sup>1</sup> On appeal, plaintiff challenges only the trial court’s order granting defendant’s motion for summary disposition and not the trial court’s order denying plaintiff’s motion for reconsideration. Evidence first presented as part of a motion for reconsideration should not be considered in reviewing a ruling on a motion for summary disposition. *Quinto v Cross & Peters Co*, 451 Mich 358, 366-367 n 5; 547 NW2d 314 (1996). Accordingly, in reviewing the trial court’s ruling on defendant’s motion for summary disposition, this Court did not consider those materials plaintiff first presented after the trial court granted defendant’s motion.

testified that she generally ran without experiencing pain in her knees. Comparing plaintiff's pre-accident life to her post-accident life demonstrates that her life is not sufficiently different. *May, supra*. The Legislature's purpose in establishing the serious impairment threshold was to "weed out from the tort system claims for injuries less severe than the criteria" established under the no-fault act while preserving tort liability for those injuries which are severe and serious. *Byer v Smith*, 419 Mich 541, 546; 357 NW2d 644 (1984). This holding is consistent with this purpose.

The assertion, that a question of fact existed regarding whether she will need surgery or leg casts to help repair her knee condition, is without merit. Plaintiff cites nothing other than the mere possibility that the minor child may one day need surgery or be fitted with leg casts to fix her legs. Without more, such is solely speculation and conjecture, which is fundamentally insufficient to create a question of fact. *Detroit v General Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998). Upon our de novo review, the trial court did not err in holding that plaintiff did not demonstrate a serious impairment of body function. The trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood  
/s/ Roman S. Gribbs