

STATE OF MICHIGAN
COURT OF APPEALS

CAMILLE REGISTER,

Plaintiff-Appellant,

v

WILLIE SLEDGE and RYAN SLEDGE,

Defendants-Appellees.

UNPUBLISHED

January 12, 2006

No. 256360

Oakland Circuit Court

LC No. 2003-049087-NO

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition in this residual bodily injury claim. Because plaintiff has failed to raise a justiciable question of fact that her injuries are objectively manifested, we affirm.

Plaintiff asserts that she presented evidence that the aggravation of her preexisting injuries met the threshold requirement of a serious impairment of body function. The presented claim arises out of a minor rear-end collision motor vehicle accident occurring on June 9, 2000. In 1999, plaintiff suffered a slip and fall accident on the premises of her employer that resulted in separate litigation for her injuries. As a result of the 1999 slip and fall accident, plaintiff was injured and treated for the same injuries that she now claims were aggravated. Approximately seven weeks before her automobile accident, her reported injuries essentially consisted of head, neck, and back injuries, pain in the affected areas, radiculopathy, hip pain, temporomandibular joint syndrome (TMJ), cognitive deficits, dizziness, ringing in her ears constantly, light flashes, and blurred vision. Plaintiff had not returned to work since her 1999 fall. She provided graphic descriptions of her ailments and claims that she sleeps all day, does not want to do anything, it takes her a long time to complete a task, she is forgetful, lost and confused at times, and does not have feelings of care or concern for anyone. Against this backdrop of reported physical and emotional disability, plaintiff claims an aggravation of her preexisting conditions caused by the automobile accident.

We review a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When reviewing a motion for summary disposition, this Court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.* A

motion brought pursuant to MCR 2.116(C)(10) should be granted when there is no genuine issue of any 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). When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Karbel v Comerica Bank*, 247 Mich App 90, 96-97; 635 NW2d 69 (2001). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

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). A serious impairment of body function is defined as “an objectively manifested impairment of an important body function that affects a person’s general ability to lead his or her normal life.” MCL 500.3135(7).

In determining whether a plaintiff has suffered a serious impairment of body function, the trial court must consider the following: (1) whether an important body function of plaintiff has been impaired; (2) whether the impairment is objectively manifested; and (3) whether the impairment affects the plaintiff’s general ability to lead his or her normal life. *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). A plaintiff does not satisfy the first prong of the serious impairment test if an unimportant body function is impaired or if an important body function has been injured but not impaired. *Id.* at 132. Further, “for an impairment to be objectively manifested, there must be a medically identifiable injury or condition that has a physical basis.” *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002), quoting with express approval SJI2d 36.11.

While we agree with plaintiff that MCL 500.3135 does not preclude a claim based on aggravation of preexisting injuries, *Wilkinson v Lee*, 463 Mich 388, 395-397; 617 NW2d 305 (2000) (holding that a plaintiff may recover under MCL 500.3135 if the trauma caused by the accident triggered symptoms from the preexisting condition), for such a claim to be successful under the no-fault act, plaintiff must show that there is a causal connection between the accident and the aggravation of the preexisting injuries and that the resultant injuries meet the threshold requirements. Therefore, the resultant injuries, preexisting and aggravation injuries or sequelae combined, must constitute an objectively manifested impairment of an important body function that affects her general ability to lead her normal life.

In response to defendant’s motion for summary disposition plaintiff presented no reported or diagnostic evidence to support her claim that the auto accident aggravated her preexisting injuries. A close review of the supporting documentation belies the claim. Plaintiff provides the emergency room report from her visit following the accident. She reports neck pain and advises the physician of her preexisting head injury from a fall at work. The physical examination is remarkable for the absence of complaints on testing and findings. Routine imaging was unremarkable and she was discharged with a diagnosis of cervical strain. Attached to plaintiff’s answer to defendant’s motion were three preprinted fill in the blank affidavits each consisting of eight relatively identical conclusory statements. None of the statements described

or indicated the asserted aggravation of preexisting conditions. Finally, plaintiff provides some reports from her treating neurologist, Dr. Bharat Tolia to supplement his affidavit. The first report supplied is the initial report of April 19, 2001 to plaintiff's treating and referring physician, Dr. Del Charbonier. Dr. Tolia's report documents plaintiff's pre-accident symptomology, her current symptoms, and her course of treatment. He provides historical reference and describes her 1999 slip and fall incident. He also documents the instant automobile accident relating an exacerbation of symptoms. He then conducts his physical and neurological examinations. All of his testing demonstrated normal findings with the exception of subjective tenderness and limitations on range of motion testing relative to the cervical and lumbar spine. He concludes that the plaintiff is "Status post-slip-and fall (on wet floor at work), Secondary head, neck, and low back injury, Post-traumatic headaches now, Cervical flexion/extension injury with secondary pain and cervical radiculopathy, Post-traumatic lumbosacral pain and lumbar radiculopathy, and Post-traumatic cognitive deficits." He neither identified an aggravation of preexisting conditions, nor identified automobile accident conditions. He recommended further electronic diagnostic testing, four modalities in total, and all of which were of normal findings. On each of the four subsequent reports as provided by plaintiff, Dr. Tolia refers to plaintiff's diagnosis as, "s/p (status-post) slip and fall." The automobile accident is never referenced again.

While plaintiff provided affidavits from her treating physicians to support her claims, that the aggravation of her preexisting injuries were both objectively manifested and causally connected to the auto accident, the trial court correctly noted the evidence was insufficient to meet her burden. The affidavits from her treating physicians were conclusory at best, the reports were based solely on plaintiff's subjective complaints, neurological testing, objective physical testing, and all electrodiagnostic testing were normal, and no objective medically identifiable condition was revealed. Plaintiff did not establish a genuine issue of material fact that her medical status constituted an objectively manifested impairment caused in part by the automobile accident. See *Quinto, supra* at 371-372 (finding that the plaintiff failed to satisfy her burden as the party opposing summary disposition because the affidavit submitted to rebut defendant's evidence was conclusory and devoid of any factual details). Similarly, the statement by Dr. Bharat Tolia that plaintiff's symptoms were exacerbated by the auto accident was not enough to establish that plaintiff's preexisting injuries were aggravated by the automobile accident because he does not explain how he reached that conclusion. Nor does Dr. Tolia explain what symptoms were exacerbated, how, or to what extent. Even when viewing this evidence in the light most favorable to plaintiff, we conclude that the trial court did not err in holding that there was no genuine issue of material fact as to whether plaintiff's impairment was objectively manifested.

However, even if the aggravation of plaintiff's preexisting injuries was objectively manifested, we would still conclude that the trial court's grant of summary disposition was appropriate in this case because plaintiff failed to show that any such aggravation affected her general ability to lead her normal life.

Under *Kreiner*, if a plaintiff can show that an important body function has been impaired, and that the impairment is objectively manifested, the trial court must then determine if the impairment affected the plaintiff's general ability to lead his or her normal life. *Kreiner, supra* at 132. To determine whether a person is generally able to lead his or her normal life, the court must consider whether the objectively manifested impairment has affected the course of the

plaintiff's life. *Id.*, at 130-131. It must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment, looking at plaintiff's life both pre- and post-accident. *Id.*, at 133. In addition, it may consider such factors as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Id.*, at 133-134. However, self-imposed restrictions do not establish that an injury has affected a person's ability to lead her normal life. *Id.*, at 133 n 17. And "[a] negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Id.*, at 137.

We conclude that there is no genuine issue of material fact as to whether plaintiff's aggravation of her preexisting injuries has affected her general ability to lead her normal life. Although plaintiff testified that after the automobile accident, her symptoms increased – the ringing in her ears got louder, her vision got worse, the stabbing pains in her legs and back got worse, and her seizures became uncontrollable, she neither supported her testimony with medical evidence, nor, does she explain how this increase in symptoms affected her general ability to led her life in any way that is different from how she led her life before the automobile accident. Plaintiff does not present any evidence that the increase in symptoms has affected the overall course of her life. She does not refer this Court to any activities that she was able to do prior to the automobile accident that she is now unable to participate. And while plaintiff claims that her ability to sleep and to exist without pain have been affected by the aggravation of her preexisting injuries, she presents no medical evidence of sleeplessness post-accident, and does not explain how her ability to exist without pain is affected when she was already suffering by her own account from substantial pain before the this accident occurred.

After *Kreiner*, it is not enough for plaintiff to show that the aggravation of her preexisting injuries had some effect on her life. Rather, she must show that her resultant injuries as aggravated affected the overall course of her life. See e.g. *Kreiner, supra* at 130-131. "A negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Id.*, at 137. Here, because the evidence presented by plaintiff reflects that she is leading essentially the same lifestyle as before the auto accident, plaintiff does not meet the threshold for a serious impairment of body function.

Affirmed.

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello

/s/ Alton T. Davis