

STATE OF MICHIGAN
COURT OF APPEALS

LINDSEY PARKER,

Plaintiff-Appellant,

v

E. CONRAD TRUCKING, INC., and KIM A.
SARGENT,

Defendants-Appellees.

UNPUBLISHED
February 28, 2006

No. 258037
Oakland Circuit Court
LC No. 2003-049782-NI

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

In this action to recover noneconomic damages from a third party under the no-fault act, plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff challenges the trial court's determination that an affidavit concerning plaintiff's closed head injury failed to create a question of fact for the jury with respect to whether plaintiff suffered a serious impairment of body function pursuant to MCL 500.3135(2)(a)(ii). We reverse and remand for further proceedings. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision to grant summary disposition de novo. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). "A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." *Id.* (citations omitted).

Pursuant to MCL 500.3135(1), a person is liable for noneconomic damages resulting from a motor vehicle accident "if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." Whether a plaintiff has suffered a serious impairment of body function is a question of law to be decided by the trial court if there are no factual disputes about the nature and extent of the plaintiff's injuries, or if there is a dispute but it is not material to the question whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a); *Kreiner v Fischer*, 471 Mich 109, 120; 683 NW2d 611 (2004). But as our Supreme Court observed in *Kreiner, supra*, p 132 n 15, MCL 500.3135(2)(a)(ii) creates "a special rule for closed head injuries . . ." The statute states, in pertinent part:

However, for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury.

In the present case, plaintiff submitted the affidavit of Dr. William Gonte, M.D., a licensed medical doctor with an active practice and who is board-certified in internal medicine, sports medicine, and geriatric medicine. Dr. Gonte averred that he examined plaintiff and opined that she “sustained a serious neurological injury diagnosed with cognitive disorders since the head trauma of October 15, 2002, and a closed head injury as a result of this accident.”

The trial court seems to have concluded that Dr. Gonte’s qualifications were insufficient to satisfy MCL 500.3135(2)(a)(ii) and questioned whether he is “one who can certify precisely what a closed head injury is.” However, Dr. Gonte averred that he is a licensed medical doctor and that he diagnoses closed head injuries as a regular part of his practice. This was sufficient to satisfy MCL 500.3135(2)(a)(ii). The statute does not require specialization in brain injuries.

Defendants argue that plaintiff failed to present objective findings to support her claim of a closed head injury and did not show a change in her general ability to lead her normal life. To recover noneconomic damages, plaintiff must establish “serious impairment of body function,” which 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). At this juncture, however, the question is whether the trial court could determine the issue of serious impairment of body function as a question of law pursuant to MCL 500.3135(2). Because there was a factual dispute concerning the nature and extent of plaintiff’s injuries and she presented an affidavit satisfying the special rule for closed head injuries, MCL 500.3135(2)(a)(ii), the issue is a question of fact for the jury.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald