

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS H. JONES, Next Friend of KELLY A.
JONES, Minor,

UNPUBLISHED
April 25, 2006

Plaintiff-Appellant,

v

No. 258974
Oakland Circuit Court
LC No. 03-054558-NI

DEBORAH A. WHEELLOCK,

Defendant-Appellee,

and

FORD MOTOR COMPANY,

Defendant.

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo the trial court's ruling on a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions, and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. *Id.* Summary disposition is appropriate when the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

A person is subject to tort liability for automobile negligence if the injured person "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." MCL 500.3135(7). Whether a person suffered a serious impairment

of body function is a question of law for the court if there is no factual dispute about the nature and extent of the plaintiff's injuries, or there is a factual dispute but it is not material to the determination whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a).

In *Kreiner v Fischer*, 471 Mich 109, 131; 683 NW2d 611 (2004), our Supreme Court established a "multi-step process . . . to provide the lower courts with a basic framework for separating out those plaintiffs who meet the statutory threshold from those who do not." The first three steps are not at issue. There was no factual dispute regarding the nature and extent of the minor plaintiff's injuries; an MRI disclosed an objectively manifested injury and the injury impaired an important body function.

If an important body function has been impaired and the impairment is objectively manifested, the issue is whether the impairment affected the plaintiff's general ability to lead her normal life. *Id.* at 132. In answering this question, the court is to compare the plaintiff's life before and after the accident and consider "the significance of any affected aspects on the course of the plaintiff's overall life." *Id.* at 132-133. Factors to consider include "(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." *Id.* at 133. "Merely 'any effect' on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his normal life." *Id.* In other words, "[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. An injury need not be permanent in order to be serious, *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000), but it must be of sufficient duration to affect the course of a plaintiff's life. *Kreiner, supra* at 135. An impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff's life is extensive. *Id.* at 134.

The minor plaintiff was hit by a car on October 30, 2003. The impact tore ligaments in her right knee. The ligaments were repaired with surgery in December 2003, and plaintiff was able to walk without assistance within a month. Following a ten-week course of physical therapy, plaintiff had regained full range of motion and nearly full function and was released without restrictions. She missed less than three months of work. She missed a few days of school immediately after the accident and a few more after the surgery, returning to school after the Christmas holiday. She had some residual pain with prolonged standing and walking, which sometimes caused swelling. The primary effects of the injury were that plaintiff stopped playing basketball and did not rejoin the marching band during the remainder of the school year. These restrictions were self-imposed. "Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish" residual impairment. *Id.* at 133 n 17. In light of such evidence, the trial court properly determined that plaintiff's injury did not affect her ability to lead her normal life.

We affirm.

/s/ Henry William Saad
/s/ Richard A. Bandstra