

STATE OF MICHIGAN
COURT OF APPEALS

LISA DELK,

Plaintiff-Appellant,

v

DAVID CLYDE PHILLIPS and DAVID LEE
GREIM,

Defendants-Appellees.

UNPUBLISHED

May 18, 2006

No. 266356

Oakland Circuit Court

LC No. 2004-062463-NI

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition in this automobile negligence action. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *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. 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. Summary disposition is appropriate only if 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 the plaintiff sustained a serious impairment of body function is to be determined in light of the test established in *Kreiner v Fischer*, 471 Mich 109, 131-133; 683 NW2d 611 (2004).

Although the trial court neglected to make the requisite findings regarding each step of the *Kreiner* test, it is apparent that genuine issues of fact precluded summary disposition. Our review of the record shows that there is an issue of fact whether the injuries plaintiff claimed to

have sustained in the February 2004 accident were causally related to that accident. There is also a question of fact concerning the effect of the injuries on plaintiff's ability to lead her normal life. As the trial court noted, in May 2003, plaintiff claimed to be nearly incapacitated by unrelenting pain. However, she testified at her deposition that nearly all of her problems had been resolved and she was able to function virtually normally by February 23, 2004, and it was only after the accident that she once again became incapacitated due to a combination of pre-existing injuries and injuries allegedly sustained in the February 2004 accident. Because genuine issues of material fact remained, the trial court erred in granting defendants' motion. *Kreiner*, supra at 132.

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

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot