

STATE OF MICHIGAN
COURT OF APPEALS

STACY BUYS,

Plaintiff-Appellant,

v

JOHN WESLEY COOPER,

Defendant-Appellee.

UNPUBLISHED

May 24, 2007

No. 274798

Muskegon Circuit Court

LC No. 06-044359-NI

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

In this third party no-fault action, plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition and denying her counter-motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On July 20, 2004, plaintiff, a passenger in the vehicle struck by defendant, suffered a broken ankle. She underwent surgery in which doctors inserted pins and a tubular plate to stabilize her injury. Plaintiff filed suit and the trial court granted summary disposition in favor of defendant, because plaintiff failed to satisfy the threshold for actions seeking noneconomic tort damages under MCL 500.3135.

Plaintiff says that the trial court erred in finding that, as a matter of law, her fractured ankle did not constitute a serious impairment of bodily function.

The decision to grant or deny summary disposition presents a question of law that this Court reviews de novo. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Summary disposition is appropriate under MCR 2.116(C)(10) when there is "no genuine issue as to any material fact." A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In deciding a motion under this rule, the trial court must consider "the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party." *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

In *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), our Supreme Court further explained:

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [Citations omitted.]

The goal of the no-fault insurance act, MCL 500.3101 *et seq*, is to “provide victims of motor vehicle accidents with assured, adequate and prompt reparation for certain economic losses.” *Turner v Auto Club Ins Ass’n*, 448 Mich 22, 41; 528 NW2d 681 (1995). Consistent with this goal, to maintain an action for noneconomic tort damages, a plaintiff must satisfy the “serious impairment of body function” threshold set by the act. *Kreiner v Fischer*, 471 Mich 109, 127; 683 NW2d 611 (2004). MCL 500.3135(1) provides:

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.

A “serious impairment of a body function” consists of 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); *Kreiner, supra*, 129. When there is no factual dispute concerning the nature and extent of the injuries, or when a factual dispute is not material to whether the person has suffered serious impairment of a body function, the issue is a question of law for the court. MCL 500.3135(2)(i)(ii); *Kreiner, supra*, 131-132.

Here, because there is no factual dispute about the nature and extent of her injuries, the trial court properly determined as a matter of law that plaintiff did not suffer a serious impairment of a body function. *Kreiner, supra*, 131-132. Under *Kreiner*, the Court correctly found that plaintiff failed to meet the threshold because her injuries did not affect her general ability to lead a normal life. In support of his motion for summary disposition, defendant presented evidence [deleted text] that plaintiff continued to lead her normal life following the accident.¹ In her deposition testimony, plaintiff testified that she began working a job as a cook

¹ In determining whether an impairment has affected a plaintiff’s general ability to lead his or her life,

a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life. Once this is identified, the court must

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a little over a month after the accident and that she had no doctor-imposed restrictions on her activities after the summer of 2004. To survive summary disposition under *Smith, supra*, 455, plaintiff had to present documentary evidence establishing a material factual dispute on this issue. Instead, plaintiff merely submitted medical records that showed the existence of her injuries, and merely asserted, without evidentiary support, that they prevented her from “maintaining her previous independent lifestyle” and restricted “her normal daily activities.” Therefore, the trial court did not err in finding that she failed to meet the serious impairment of a body function threshold under MCL 500.3135.

Plaintiff further asserts that the trial court erred in granting defendant’s motion for summary disposition because the scar on her ankle constitutes a permanent serious disfigurement as a matter of law.

Generally, whether a particular injury constitutes a permanent serious disfigurement is a question for the trier of fact. *Petaja v Guck*, 178 Mich App 577, 579; 444 NW2d 209 (1989). But if reasonable minds could not differ as to whether the plaintiff suffered a permanent serious disfigurement, the trial court may rule on the issue as a matter of law. *Id.*

Whether a scar is a permanent serious disfigurement depends on the scar’s physical characteristics rather than its effect on the plaintiff’s ability to lead a normal life. *Kosack v Moore*, 144 Mich App 485, 491; 375 NW2d 742 (1985). The seriousness of a scar must be determined based on “the common knowledge and experience of the trial bench in the first instance and, if the case goes to it, the jury.” *Nelson v Myers*, 146 Mich App 444, 446 n 2; 381 NW2d 407 (1985).

Here, plaintiff has a vertical scar along the outside of her right ankle. Both plaintiff’s counsel and the trial court described it as being approximately five inches in length. The photograph submitted by plaintiff shows that the scar is partially obscured by a preexisting tattoo that circles her ankle. After examining the scar in person, the trial court noted that it appeared to have faded since the picture was taken. The photograph combined with the description given by the trial court provides an adequate record for this Court to determine as a matter of law whether plaintiff’s scar meets the no-fault threshold. Based on the record, we find that reasonable minds must agree that plaintiff did not suffer a permanent serious disfigurement within the meaning of MCL 500.3135. Consequently, we affirm the trial court’s order granting defendant’s motion for summary disposition and denying plaintiff’s counter-motion for summary disposition.

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engage in an objective analysis regarding whether any difference between the plaintiff’s pre- and post-accident lifestyle has actually affected the plaintiff’s “general ability” to conduct the course of his life. Merely “any effect” on the plaintiff’s life is insufficient because a de minimis effect would not, as objectively viewed, affect the plaintiff’s “general ability” to lead his life. [*Kreiner, supra*, 132-133.]

Affirmed.

/s/ Helene N. White

/s/ Henry William Saad

/s/ Christopher M. Murray