

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH MORRIS and LAVERNE MORRIS,

Plaintiffs-Appellants,

v

GLENDALE HAMILTON SERVICE and JOHN
LESLIE LEVERETT,

Defendants-Appellees.

UNPUBLISHED
November 6, 1998

No. 202719
Wayne Circuit Court
LC No. 95-510102 CZ

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs brought this action under the no-fault act, seeking recovery for non-economic damages related to a serious impairment of bodily function. MCL 500.3135(1); MSA 24.13135(1). Defendants moved for summary disposition, asserting that plaintiff Deborah Morris failed to show that she sustained a serious impairment of bodily function causally related to the accident. The trial court found that plaintiff failed to establish a genuine issue of fact regarding whether an aggravation of her preexisting symptoms was causally related to the accident, and granted summary disposition.

In order to recover for non-economic loss under the no-fault act, a plaintiff is required to show that her non-economic losses arose out of an injury that seriously impaired a bodily function. MCL 500.3135(1); MSA 24.13135(1).

The question whether a plaintiff suffered a serious impairment of bodily function must be submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer. *DiFranco v Pickard*, 427 Mich 32, 38; 398 NW2d 896 (1986); *Kallio v Fisher*, 180 Mich App 516, 517-518; 448 NW2d 46 (1989). Medical evidence will be needed to establish the existence, extent, and permanency of the impairment. *DiFranco, supra* at 39. Summary disposition is

* Circuit judge, sitting on the Court of Appeals by assignment.

appropriate where reasonable minds could not differ in concluding that a plaintiff's injuries did not constitute serious impairment of body function. *Kallio, supra* at 519.

At argument on defendants' motion in trial court, plaintiffs premised their case on the fact that the automobile accident aggravated Deborah Morris' pre-existing neck, shoulder, and knee conditions. Plaintiffs relied on the deposition of treating physician Lester Kobylak, M.D. However, Dr. Kobylak's deposition did not support plaintiffs' claim that the accident aggravated those conditions. Where the deposition did not show the existence of a genuine issue of fact for trial, the court properly granted summary disposition.

We affirm.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski