

STATE OF MICHIGAN
COURT OF APPEALS

KOLLEEN J. MITCHELL,

Plaintiff-Appellant,

v

LAURIE ELLEN STEWART,

Defendant-Appellee.

UNPUBLISHED

June 30, 2000

No. 215052

Muskegon Circuit Court

LC No. 97-337650-NI

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant and dismissing plaintiff's tort liability claim for serious impairment of a body function, MCL 500.3135; MSA 24.13135, following an automobile accident. We affirm in part and remand for further proceedings.

I

Plaintiff filed a lawsuit against defendant for injuries sustained in an automobile accident that occurred when defendant attempted to enter a highway on which plaintiff was traveling and defendant's pickup truck struck plaintiff's car. Plaintiff allegedly suffered injuries that caused her low-back pain and prevented her from undertaking her normal activities. Following discovery, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff had not shown an objectively manifested impairment necessary to establish a serious impairment of body function under the statute. The trial court agreed and granted defendant's motion.

II

An order granting summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Id.* A court must consider the pleadings, depositions, affidavits, admissions, and other documentary evidence submitted by the parties. *Id.* A motion for summary disposition may be granted if there is no genuine issue of material fact, and

the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). If the party opposing the motion fails to present evidentiary proofs creating a genuine issue of material fact, summary disposition is properly granted. *Id.* at 455, n 2.

III

Plaintiff first argues that the court erred in granting defendant's motion for summary disposition because the motion was premature. We disagree. Summary disposition may be premature if granted before discovery on a disputed issue is complete. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996). In this case, defendant's motion was not filed until August 31, 1998, after the period for discovery had closed on July 24, 1998. Plaintiff provides no authority to support her argument that summary disposition was nevertheless premature because she had not yet taken the deposition of her treating physician, which was scheduled to take place one week before trial. "A party may not leave it to this Court to search for authority to sustain or reject its position." *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987).

IV

Plaintiff further argues that summary disposition was improper because there was a factual dispute concerning the nature and extent of plaintiff's injuries, and, thus, the issue whether plaintiff suffered a serious impairment of body function was a matter for the jury to decide, not a question of law for the court.

Under the no-fault act, "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); MSA 24.13135(7); *May v Sommerfield*, 239 Mich App 197, 201; 607 NW2d 422 (1999). MCL 500.3135(2)(a); MSA 24.13135(2)(a), provides:

The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement.

A trial court cannot determine whether a "plaintiff [has] suffered a serious impairment of body function as a matter of law without first making the factual findings required under MCL 500.3135(2)(a)(i) or (ii); MSA 24.13135(2)(a)(i) or (ii)." *May, supra* at 202.

Although the lower court record and opinion reflect that the trial court carefully considered the evidence in reaching its decision to grant summary disposition, we find that on the basis of our recent

decisions in *May, supra*, and *Churchman v Rickerson*, 240 Mich App 223, 232; ___ NW2d ___ (2000), the trial court must enunciate its factual findings in accordance with MCL 500.3135(2)(a); MSA 24.13135(2)(a), before deciding the issue of serious impairment as a matter of law. Such findings are necessary for this Court to determine whether the grant of summary disposition is proper. *Churchman, supra* at 232.

In light of our decision, we do not reach the issue whether the trial court erred in concluding that plaintiff's injuries failed to meet the statutory threshold requirement of a "serious impairment of a body function," MCL 500.3135(1); MSA 24.13135(1), necessary to establish defendant's tort liability under the no-fault act.

Affirmed in part and remanded for further proceedings consistent with this opinion. We instruct the trial court to file its findings with this Court within sixty days of this opinion. We retain jurisdiction.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Janet T. Neff