

STATE OF MICHIGAN
COURT OF APPEALS

KOLLEEN J. MITCHELL,

Plaintiff-Appellant,

v

LAURIE ELLEN STEWART,

Defendant-Appellee.

UNPUBLISHED

August 29, 2000

No. 215052

Muskegon Circuit Court

LC No. 97-337650-NI

AFTER REMAND

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

PER CURIAM.

This case is decided after remand to the trial court pursuant to MCL 500.3135(2)(a); MSA 24.13135(2)(a), for findings on the nature and extent of plaintiff's injuries from an automobile accident with defendant, in regard to plaintiff's tort liability claim for serious impairment of a body function, MCL 500.3135; MSA 24.13135. We reverse the trial court's grant of summary disposition for defendant.

I

The underlying facts of this case were set forth in our previous decision:¹

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.

On appeal to this Court, we remanded the case to the trial court for the appropriate findings under MCL 500.3135(2)(a); MSA 24.13135(2)(a), which provides:

¹ *Mitchell v Stewart*, unpublished opinion per curiam of the Court of Appeals, issued 6/30/00 (Docket No. 215052).

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.

On July 18, 2000, the trial court issued a supplemental opinion, finding that there was no factual dispute concerning the nature and extent of plaintiff's injuries and that plaintiff had not incurred an objectively manifested impairment as required under the no-fault act, MCL 500.3135(1) and (7); MSA 24.13135(1) and (7), to maintain a tort liability claim against defendant.

II

We review de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). 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). Absent an "outcome-determinative genuine factual dispute," the issue of threshold injury under the no-fault act, MCL 500.3135(1); MSA 24.13135(1), is a question of law, subject to review de novo. *Kern v Blethen-Coluni*, 240 Mich App 333, 341-342; 612 NW2d 838 (2000).

III

The no-fault act limits liability for noneconomic losses to circumstances involving death, serious impairment of a body function, or permanent serious disfigurement. MCL 500.3135(1); MSA 24.13135(1); *DiFranco v Pickard*, 427 Mich 32, 37; 398 NW2d 896 (1986); *Churchman v Rickerson*, 240 Mich App 223, 226; 611 NW2d 333 (2000). 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).

A

Plaintiff first argues that there was a factual dispute concerning the nature and extent of her 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. We disagree.

Since plaintiff filed her appeal, this Court has clarified that absent an outcome-determinative genuine factual dispute, the issue whether a plaintiff suffered a serious impairment of body function is a question of law for the court. *Kern, supra* at 341-342. The *Kern* Court determined that the provisions in MCL 500.3135(2)(a); MSA 24.13135(2)(a), resulted from the Legislature's concern with the

unpredictability of jury determinations regarding the no-fault tort threshold: “One of the major changes of [1995 PA 222] was to make the determination of threshold injury (serious impairment of body function or permanent serious disfigurement) an issue of law rather than an issue of fact.” *Kern, supra* at 338, 340.

The disputed matters in this case center not on the factual nature of plaintiff’s injuries, but rather on the threshold legal question whether the injuries constitute a serious impairment of body function under MCL 500.3135(7); MSA 24.13135(7). In light of the decision in *Kern*, we conclude that the issue whether plaintiff suffered a serious impairment of body function was properly a decision of law for the trial court.

B

Plaintiff next argues that even assuming that there is no material factual dispute, the trial court erred in concluding that plaintiff failed to show a serious impairment of body function. We agree that the court erred in concluding that plaintiff failed to show a serious impairment of body function because there was no evidence of an “objectively manifested” injury as required under the no-fault statute, MCL 500.3135(7); MSA 24.13135(7).

“[F]or an impairment to be objectively manifested, there must be a medically identifiable injury or condition that has a physical basis.” SJI2d 36.11; *DiFranco, supra* at 74-75.² In this case, the evidence established that plaintiff had a large hematoma over her spine, which, according to her physician, was causing a fair portion of her pain. She was diagnosed with lumbosacral sprain. Further, a positive straight-leg raising test produced pain, indicating “straight leg raising bilaterally at approximately 60 degrees on left and probably 40 or 50 degrees on right.” Medical testimony indicated that plaintiff’s physical examination was fifty percent objective and fifty percent subjective. We find that these undisputed facts established an objectively manifested impairment sufficient to survive defendant’s motion for summary disposition.

Reversed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Janet T. Neff

² The recently amended no-fault statute does not define the phrase “objectively manifested.” However, in *DiFranco, supra* at 70-75, our Supreme Court examined the contours of previous judicial interpretations of this phrase and concluded that an objectively manifested injury requires merely that the plaintiff prove that his noneconomic losses arose out of a “medically identifiable injury,” i.e., “plaintiffs must introduce evidence [of] a physical basis for their subjective complaints of pain and suffering.” The *DiFranco* Court’s interpretation of the phrase “objectively manifested” was left unchanged by the subsequent amendment to the no-fault act, 1995 PA 222, which incorporated the objectively manifested standard. The Legislature is presumed to act with knowledge of statutory interpretations by appellate courts. *Gordon Sel-Way v Spence Bros, Inc.*, 438 Mich 488, 505-506; 475 NW2d 704 (1991).