

STATE OF MICHIGAN
COURT OF APPEALS

KISCHA MARIE SPAGNUOLO and JEFFREY
SPAGNUOLO,

UNPUBLISHED
December 14, 2001

Plaintiffs-Appellants,

v

RICHARD LEROY DORN, XEROX
CORPORATION, and GELCO CORPORATION,

No. 225535
Ingham Circuit Court
LC No. 98-089252-NI

Defendants-Appellees.

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

In this automobile negligence case, plaintiffs appeal as of right from an order granting summary disposition for defendants under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Under MCL 500.3135(1), 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.” Plaintiffs contend that the trial court erred in granting summary disposition for defendants because there existed a genuine issue of material fact whether plaintiff Kischa Spagnuolo (plaintiff) suffered a serious impairment of body function as a result of her collision with a van driven by defendant Richard Dorn.

This Court reviews a decision regarding a motion for summary disposition de novo. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. In deciding a motion brought under this subrule, the trial court considers the documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* MCL 500.3135(2)(a)(i) and (ii) provide in relevant part that the issue whether an injured person has suffered a serious impairment of body function is a question of law for the court if the court finds either (1) no factual dispute concerning the nature or extent of the person’s injuries, or (2) there

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

is such a factual dispute, but the dispute is not material to the determination whether the person has suffered a serious impairment of body function. Under this scheme, the issue whether a plaintiff suffered a serious impairment of body function should be submitted to a jury only when there is an outcome-determinative genuine factual issue in dispute. *Kern v Blethen-Coluni*, 240 Mich App 333, 341-342; 612 NW2d 838 (2000).

The no-fault act defines serious impairment of body function 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). In *Kern, supra* at 341, this Court set forth a nonexhaustive list of factors to be considered in determining whether a plaintiff’s impairment is “serious,” including extent of the injury, treatment required, duration of disability, and extent of residual impairment and prognosis for eventual recovery. Here, plaintiff failed to demonstrate that her general ability to lead a normal life has been affected by her TMJ disorder. Plaintiff’s dentist testified that her last complaint of any soreness in her left jaw was in October 1998. Her post-accident complaints regarding her right TMJ could be attributed to the accident only to the extent that they were brought on by problems with her left TMJ. The only activity that plaintiff testified was affected by her injury was eating; she tended to eat softer foods and avoid larger items. Although she has frequent headaches, they are controlled with over-the-counter products such as ibuprofen. Aside from prescription doses of ibuprofen and occasional moist heat treatments for her TMJ disorder, her medical treatment has been limited to wearing a bite splint at night, although she apparently chose to wear it to work briefly in 1998. She has worked full-time since the accident.

In both *Kern, supra* at 342, and *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001), this Court adopted the approach taken in cases cited in *Burk v Warren (After Remand)*, 137 Mich App 715; 359 NW2d 541 (1984), *aff’d DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986), to decide whether the plaintiffs’ injuries met the no-fault act’s threshold. In those earlier cases, where the plaintiffs, like the plaintiff in this case, suffered pain and discomfort but were not incapacitated or subjected to significant changes in lifestyle, this Court determined that the trial courts correctly decided as a matter of law that the plaintiffs had not suffered a serious impairment. In *Miller, supra*, the plaintiff took daily prescription pain medication for her shoulder injury, but continued working full-time, could perform household tasks, and failed to demonstrate any curtailment in her general day-to-day activities. *Miller, supra* at 249-250. This Court concluded that the trial court should have granted summary disposition for the defendant because this did not amount to a serious impairment of body function. *Id.* Applying a similar approach in this case, we conclude that the trial court correctly found that, as a matter of law, plaintiff failed to establish the existence of a serious impairment of body function.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post