

STATE OF MICHIGAN
COURT OF APPEALS

TAYMOUR RIAD HALLAL,

Plaintiff-Appellant,

v

CLAYTON RHEA FREELS, JR. and SHEILA
PHILLIPS,

Defendants-Appellees.

UNPUBLISHED
February 26, 2002

No. 228312
Oakland Circuit Court
LC No. 99-016734-NI

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to recover damages for injuries sustained in an automobile accident. The trial court dismissed his complaint, finding that plaintiff had failed to prove that his injuries met the serious impairment threshold.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must view this evidence in a light most favorable to the opposing party. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, and the moving party is entitled to judgment as a matter of law. *Smith, supra* at 454-455, quoting *Quinto, supra* at 362-363.

A person is subject to tort liability for automobile negligence if the injured person suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A 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). Whether a person suffered a serious impairment of body function is a question of law for the court if there is: (i) no factual dispute about the

nature and extent of the plaintiff's injuries; or (ii) there is a factual dispute but it is not material to the determination whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a).¹

The trial court found that the evidence established an objectively manifested injury that affected an important body function, but that the injury did not affect plaintiff's ability to lead a normal life. We agree. To be sure, the evidence showed that plaintiff had continuing back and leg pain. However, his ability to work was not medically restricted, even though the pain sometimes caused him to miss work or to take additional breaks. The only other manifestations of his injury were that he could not go out dancing as frequently as he used to, no longer performed all of his regular household tasks, had to change his usual sleeping posture, and gained some weight, presumably due to his less active lifestyle. Although these minor lifestyle changes are undoubtedly frustrating, we do not believe that these facts are sufficient to cause reasonable minds to differ in concluding that plaintiff's injury was not a "serious impairment of body function," as defined by statute and applied by the controlling case law.² *Mekler v Bigham*, 147 Mich App 716, 720; 383 NW2d 95 (1985); *Franz v Woods*, 145 Mich App 169, 177-178; 377 NW2d 373 (1985); *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984).

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin D. Doctoroff
/s/ Donald S. Owens

¹ Because the statutory definition of serious impairment of body function is the same as that adopted in *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982), it is appropriate to refer to *Cassidy* and its progeny in deciding this case. *Kern v Blethen-Coluni*, 240 Mich App 333, 342; 612 NW2d 838 (2000).

² See *supra*, fn 1.