

STATE OF MICHIGAN
COURT OF APPEALS

MONICA URBAN,

Plaintiff-Appellant,

v

MICHAEL EVAN JACOBSON,

Defendant-Appellee.

UNPUBLISHED

January 15, 2004

No. 244056

Livingston Circuit Court

LC No. 01-018962-NI

Before: Zahra, P.J., Cavanagh and Cooper, JJ.

PER CURIAM.

Plaintiff appeal as of right the trial court's order granting defendant's motion for summary disposition. We reverse and remand.

On appeal, plaintiff argues that the trial court improperly granted defendant's motion for summary disposition. We review a trial court's decision regarding summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). In regard to a motion under MCR 2.116(C)(10), the trial court must consider the pleadings, depositions, affidavits, admissions and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. The moving party has the initial burden of supporting its position with documentary evidence. Once the moving party meets its burden, the burden shifts to the nonmoving party to establish that a genuine and material issue of disputed fact exists. The nonmoving party may not rest on mere allegations or denials in pleadings. The moving party is entitled to judgments as a matter of law where the proffered evidence fails to establish a genuine and material factual dispute. *Kelly-Stehney & Assoc, Inc v McDonald Industrial Products, Inc*, 254 Mich App 608, 611-612; 658 NW2d 494 (2003).

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). Here, plaintiff has presented evidence to establish an objective manifestation of an injury (MRI) to an important body function (neck and back). See *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986); *Shaw v Martin*, 155 Mich App 89, 96; 399 NW2d 450 (1986). Accordingly, this case turns on whether plaintiff's injury affected her "general ability to lead her normal life."

However, we are unable to review this issue because the trial court failed to make findings required under MCL 500.3135(2)(a)(i) or (ii) "[A] trial court cannot determine whether

plaintiff 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).” *May v Sommerfield*, 239 Mich App 197, 202; 607 NW2d 422 (1999). Here, the record reflects that the trial court did not make such findings.

On remand, the trial court must make findings concerning whether a factual dispute exists with respect to whether plaintiff suffered a “serious impairment of body function, considering ‘the nature and extent’ of plaintiff’s injuries consistent with [MCL 500.3135(2)(a)(i) or (ii)].” Applied to this case, the trial court, “[i]n determining the ‘extent’ of plaintiff’s injuries, the trial court should make appropriate findings concerning whether there is a factual dispute with respect to whether the impairment affects plaintiff’s “general ability to lead [her] . . . normal life.” *May, supra* at 203.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper