STATE OF MICHIGAN

COURT OF APPEALS

JAMES SROUFE and CATHERINE SROUFE,

Plaintiffs-Appellants,

v

DAVID JOSEPH PYZIK and ROGER PYZIK,

Defendants-Appellees.

UNPUBLISHED
November 29, 2005

No. 263196
Lenawee Circuit Court
LC No. 03-001411-NZ

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition and sanctions. We affirm in part and reverse in part.

Plaintiffs were allegedly injured in an automobile accident involving defendant David Joseph Pyzik. Following the automobile accident, plaintiff James Sroufe was treated for heart conditions, a shoulder injury, and vertigo. However, plaintiff James had suffered a shoulder injury and was diagnosed with heart problems before the accident. Plaintiff James alleged that he was terminated from his employment because of driving restrictions imposed as a result of the vertigo. Plaintiff Catherine Sroufe did not receive extensive medical treatment following the accident, but complained of conditions she had before the accident. Plaintiffs did not pursue Catherine's claims and offered to stipulate to dismiss her claims. Defendants moved for summary disposition of the litigation and requested sanctions based on plaintiff Catherine's claims. The trial court granted defendants' motion for summary disposition and awarded sanctions.

Plaintiffs first allege that the trial court erred in concluding, as a matter of law, that summary disposition was appropriate. It was alleged that, at a minimum, questions of fact existed and that plaintiff James suffered a permanent serious disfigurement. We disagree. Appellate review of summary disposition decisions is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence when the motion is based on MCR 2.116(C)(7) or (10). *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id*. To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id*. Affidavits, depositions, and documentary

evidence offered in support of, and in opposition to, a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

Tort liability for automobile accidents was abolished in favor of the no-fault act, 1972 PA 294, to provide a person injured in an auto accident with certain economic compensation from his own insurance company without regard to fault. *Kreiner v Fischer*, 471 Mich 109, 114; 683 NW2d 611 (2004). In exchange for the payment of economic loss benefits from one's own insurance company, an injured person's ability to sue the negligent owner or operator of a motor vehicle for bodily injury is limited. *Id*. A tort suit against a third party for noneconomic damages is only permitted when the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. *Id*.; See MCL 500.3135(1).

If there is no factual dispute concerning the nature and extent of a person's injuries, the court may decide the issue as a matter of law. The court must determine if an important body function has been impaired. It is insufficient if an important body function has been injured, but not impaired. The impairment must be objectively manifested, subjective complaints are insufficient to succeed. Once it is concluded that an important body function is impaired and objectively manifested, the court must determine if the impairment affects the general ability to lead his normal life. Any effect, such as a de minimus effect, on one's life is insufficient. Rather, the court may examine the nature and extent of any impairment, the treatment required, the duration of the impairment, any residual impairment, and the prognosis for recovery. *Kreiner, supra* at 131-134.

The trial court did not err as a matter of law in granting defendants' motion for summary disposition with regard to plaintiff James' claims. Plaintiff's complaints regarding his heart and shoulder were present before the accident and did not impact his general ability to lead his life following the accident. Moreover, the vertigo was reportedly resolved in four weeks, although the driving restrictions continued. Plaintiff did not present objective, documentary evidence, *Maiden, supra*, of a recurrence of the vertigo such that additional treatment or driving restrictions were required. The criteria set forth in *Kreiner, supra*, for recovery of noneconomic damages was not satisfied. Moreover, the dislocation of the shoulder does not satisfy the standard for serious permanent disfigurement. See *Petaja v Guck*, 178 Mich App 577, 579; 444 NW2d 209 (1989).

However, we conclude that the trial court clearly erred in awarding sanctions based on the filing of plaintiff Catherine's claims. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). The *Kreiner* decision delineated the criteria for recovery of noneconomic damages, and following the release of *Kreiner*, plaintiffs decided that her claim would not be pursued and voluntarily sought dismissal. Under the circumstances, sanctions were not warranted.

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood