

STATE OF MICHIGAN
COURT OF APPEALS

MARILYN TAYLOR,

Plaintiff-Appellant,

v

ANTHONY DAVIS,

Defendant-Appellee.

UNPUBLISHED

October 23, 2007

No. 274795

Wayne Circuit Court

LC No. 05-535798-NI

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this automobile negligence action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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. 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 give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

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). In *Kreiner v Fischer*, 471 Mich 109, 131-133; 683 NW2d 611 (2004), the Court established a "multi-step process . . . to provide the lower courts with a basic framework for separating out those plaintiffs who meet the statutory threshold from those who do not."

The parties do not appear to dispute that the trial court could determine the issue as a matter of law or that the plaintiff suffered an impairment of an important body function. They

dispute whether the impairment was objectively manifested and whether it affected plaintiff's general ability to lead her normal life.

An objectively manifested injury is a medically identifiable injury or condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). This means that the injury "must be capable of objective verification by a qualified medical person either because the injury is visually apparent or because it is capable of detection through the use of medical testing." *Netter v Bowman*, 272 Mich App 289, 305; 725 NW2d 353 (2006) (note omitted). An impairment can be objectively manifested, for example, by an x-ray, *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984), other objective tests such as an MRI or an EMG, *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 685; 671 NW2d 95 (2003), rev'd on other grounds 471 Mich 109 (2004), or a passive range of motion test, *Shaw v Martin*, 155 Mich App 89, 96; 399 NW2d 450 (1986). "Subjective complaints that are not medically documented are insufficient." *Kreiner, supra*, 471 Mich at 132.

There is no doubt that plaintiff had objectively manifested injuries that predated the December 2004 accident at issue, but there is no evidence of an objectively verifiable injury that was caused by the December 2004 accident. The only objective tests done after the accident consisted of x-rays and an MRI. The MRI showed a bulging disk at C3-C4, but that same injury had been documented following a January 2002 accident and there is no evidence that it was worsened by the December 2004 accident. Cervical x-rays showed some sort of abnormality by the aortic nerve and disk space narrowing at C4-C5, although this latter condition was not confirmed by the MRI. There is no evidence in the record to establish that the unspecified abnormality and the possible disk space narrowing were causally related to the December 2004 accident or that these conditions in plaintiff's neck created the pain and weakness in her shoulder, arm, and hand.

The crux of plaintiff's claim is that the December 2004 accident exacerbated the neck and shoulder pain resulting from the injuries sustained in her previous accidents. Our Supreme Court has recognized that "recovery is allowed if the trauma caused by the accident triggered symptoms from [a preexisting] condition." *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000). However, *Wilkinson* involved a cause of action that had accrued in 1992 and thus was not affected by 1995 PA 222, which amended MCL 500.3135 to define a serious impairment of body function as one that involves, among other things, an objectively manifested impairment. Because plaintiff has not provided evidence of an objectively manifested impairment caused by the December 2004 accident or a medically documented change in her condition that would account for the change in her symptoms, she cannot meet the serious impairment threshold for recovering noneconomic damages. Therefore, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis