

STATE OF MICHIGAN
COURT OF APPEALS

RITA S. KHAMI,

Plaintiff-Appellant,

v

MARTIN GJONLLESHAJ and ALBERT
GJONLLESHAJ,

Defendants-Appellees.

UNPUBLISHED
October 18, 2012

No. 306347
Macomb Circuit Court
LC No. 2010-003983-NI

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

In this action to recover noneconomic damages under the no-fault act, plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).¹ We affirm.

The trial court determined that plaintiff could not meet the threshold for establishing a serious impairment of body function² because her injuries did not affect her general ability to lead her normal life under *McCormick v Carrier*.³

This Court reviews a trial court's decision on a motion for summary disposition de novo.⁴ A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint.⁵ A reviewing court must consider the affidavits, depositions, admissions, and other documentary evidence

¹ Defendants' motion was brought under MCR 2.116(C)(8) and (C)(10). The trial court did not specify the subrule under which it granted the motion, but because the court considered evidence outside the pleadings, we review the motion as having been granted under MCR 2.116(C)(10). *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002).

² MCL 500.3135(7).

³ 487 Mich 180; 795 NW2d 517 (2010).

⁴ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

⁵ *Id.* at 120.

submitted by the parties and, viewing that evidence in the light most favorable to the nonmoving party, determine whether there is a genuine issue of material fact for trial.⁶

A plaintiff may recover noneconomic damages under the no-fault act where the plaintiff has suffered “death, serious impairment of body function, or permanent serious disfigurement.”⁷ The statute 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.”⁸

Pursuant to *McCormick*, the threshold question “whether the person has suffered a serious impairment of body function should be determined by the court as a matter of law as long as there is no factual dispute regarding the ‘nature and extent of the person’s injuries’ that is material to determining whether threshold standards are met.”⁹ As analyzed in *McCormick*, the three prongs that are necessary to establish a serious impairment of body function are “(1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions) (2) of an important body function (a body function of value, significance, or consequence to the injured person) that (3) affects the person’s general ability to lead his or her normal life (influences some of the plaintiff’s capacity to live in his or her normal manner of living).”¹⁰ “[T]he plaintiff has to show that the plaintiff’s ability to lead a normal life has been affected by comparing the plaintiff’s life before and after the injury.”¹¹

In the instant case, plaintiff failed to establish that her ability to lead her normal life was affected as defined by MCL 500.3135(1). Plaintiff contends that her ability to use sign language was affected during her recovery, but she did not present evidence that use of sign language was part of her normal life. Indeed, her deposition transcript contains no reference to the presence or use of a sign language interpreter nor is there any indication that plaintiff’s answers were not stated verbally or that she had any difficulty hearing and speaking during the deposition. Moreover, while she testified that *without* her hearing aids she is deaf, she did not testify that she cannot hear adequately with her hearing aids in use or that she uses sign language. Plaintiff also contends that her ability to perform chores and homemaker activities was significantly affected by the injury to her non-dominant hand. Again, however, she did not present evidence to support this claim. She testified only that her mother and husband assisted her in unspecified ways for a short period after the accident and did not present any evidence describing her homemaking activities before the accident, how the injury affected her activities, and for what period of time. Lastly, plaintiff asserts that she could not hold her baby during the period in which her wrist was

⁶ *Id.*

⁷ MCL 500.3135(1).

⁸ MCL 500.3135(7).

⁹ 487 Mich at 193.

¹⁰ *Id.* at 215.

¹¹ *Nelson v Dubose*, 291 Mich App 496, 498-499; 806 NW2d 333 (2011).

casted. In her deposition, however, she made no such assertion and testified that even when casted she was able to feed the baby and change its diaper. In her brief, plaintiff asserts that she wanted to go back to work, and she claims that her ability to perform jobs with lifting has been affected. Again, however, plaintiff did not present any testimony or evidence to support these assertions. Plaintiff also asserts that her ability to participate in certain physical recreational activities has been affected, but she similarly did not present any evidence to support that her ability to perform such activities is limited or that these activities were part of her normal life.

The evidence established that plaintiff fractured her non-dominant wrist and that it was immobilized for less than two months, but no evidence was presented to demonstrate that plaintiff's ability to lead her normal life was significantly altered even during this two month period, let alone thereafter. The trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro