

STATE OF MICHIGAN
COURT OF APPEALS

LINDA JACKSON,

Plaintiff-Appellant,

v

JAMES ALLEN WOJCZYNSKI and JOSEPH
AARON WOJCZYNSKI,

Defendants-Appellees.

UNPUBLISHED

March 20, 1998

No. 195673

Kent Circuit Court

LC No. 95-001990-NI

Before: Griffin, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

In this vehicular negligence case, plaintiff appeals of right from the trial court order granting summary disposition in favor of defendants. We affirm.

We have reviewed the trial court's grant of summary disposition de novo to determine, based on the record submitted to the trial court, if defendants were entitled to judgment as a matter of law. *G & A, Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). Because matters outside of the pleadings were considered, we review this issue under MCR 2.116(C)(10). See *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 524; 542 NW2d 912 (1995).

MCL 500.3135(1); MSA 24.13135(1) states in pertinent part that a person injured in a motor vehicle accident may recover noneconomic damages from a defendant for "loss caused by [the defendant's] . . . ownership, maintenance, or use of a motor vehicle . . . if the injured person has suffered . . . serious impairment of body function." In *DeFranco v Pickard*, 427 Mich 32, 67; 398 NW2d 896 (1986), the Michigan Supreme Court observed that "[t]he 'serious impairment of body function' threshold contains two straightforward inquiries: 1) What body function . . . was impaired because of injuries sustained in a motor vehicle accident? 2) Was the impairment serious?"

Upon viewing the documentary evidence in a light most favorable to plaintiff, *Butler, supra* at 524, we conclude that reasonable minds could not conclude that plaintiff's injury constituted a serious impairment of a body function. Plaintiff claims that since the accident she has suffered a loss of mobility in her left shoulder. Without addressing whether or not plaintiff has established that this loss of

functioning was actually caused by injuries sustained in the accident, we note that plaintiff has failed to show that the alleged impairment was indeed serious. *Kallio v Fisher*, 180 Mich App 516; 448 NW2d 46 (1989); *Johnston v Thorsby*, 163 Mich App 161; 413 NW2d 696 (1987).

Upon plaintiff's release from the emergency room that examined her, plaintiff was instructed to treat her injury with an ordinary analgesic and ice packs. All x-rays taken at the emergency room failed to uncover the presence of a fracture or other similarly observable injury. The physician at the back and neck clinic that subsequently treated plaintiff after she complained of continuing pain in her shoulder and neck, reported that plaintiff retained full range of motion in the shoulder. This physician also indicated that plaintiff would be able to return to work as a motel maid in two weeks after he had initially examined her.¹ Plaintiff admitted in her deposition that no doctor has ever placed any work or recreational restrictions on her. Additionally, the doctor that examined plaintiff at the request of her attorney characterized her injury as being "nagging" and "quite annoying." We do not believe that such a description identifies an injury that can be classified as serious under the terms of MCL 3135(1); MSA 24.13135(1). In fact, this doctor also reported that although it would take approximately twenty-four months, plaintiff would "probably . . . be carrying out her usual activities without restriction" if plaintiff followed a suggested regime of stretching and strengthening exercises. Given these circumstances, we believe that the trial court acted properly when concluding that defendants were entitled to a judgment as a matter of law.

We also disagree with plaintiff's assertion that the trial judge erroneously based his ruling on the "objectively manifested injury" standard rejected by the *DiFranco* Court. *DiFranco, supra* at 75. In *DiFranco*, the Michigan Supreme Court rejected that line of cases that had interpreted the "objectively manifested" language found in *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982), as meaning that MCL 500.3135(1);MSA 24.13135(1) "limits recovery of noneconomic damages to plaintiffs whose injuries can be seen or felt." *DiFranco, supra* at 75. While the trial judge indicated that he was granting summary disposition because he did not find "an objectively manifested injury which rises to the level of a jury-submissible injury," we believe that the transcript of the summary disposition hearing indicates that the trial judge was not following the rejected interpretation of the "objectively manifested" standard. Assuming, however, that the trial judge did apply the rejected standard, such an error was harmless given our conclusion that summary disposition was proper under standards set forth in *DiFranco*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff

¹ Plaintiff testified in her deposition that she left her job at the motel after returning to work in October 1993 because of continuing pain. However, the record indicates that the motel fired plaintiff after it

discovered that she had falsified the clinic's medical report, changing the date the clinic physician indicated she could return to work from July 16, 1993 to October 16, 1993.