

STATE OF MICHIGAN
COURT OF APPEALS

KAREN STEPHENS and RANDALL
STEPHENS,

UNPUBLISHED
February 26, 2002

Plaintiffs-Appellants,

v

MICHAEL JASON HALAMA,

No. 228078
Macomb Circuit Court
LC No. 98-004257-NI

Defendant-Appellee,

and

ANDREW GIETZEN, DALE KOVIAK,
STATEWIDE PORTABLE SANITATION and
ALLSTATE INSURANCE COMPANY,

Defendants.

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Plaintiffs appeal by right from a circuit court order granting defendant Halama's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Karen Stephens filed this action to recover damages for injuries sustained in two automobile accidents. The trial court dismissed her complaint against Halama, who allegedly caused the second accident, finding that plaintiff had failed to prove that the injuries sustained in that accident met the serious impairment threshold.

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. *Id.* In ruling on such a motion, the trial court considers not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must view this evidence in a light most favorable to the opposing party. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). Summary disposition is appropriate only if the opposing party fails to present documentary evidence

establishing the existence of a material factual dispute, and the moving party is entitled to judgment as a matter of law. *Smith, supra* at 454-455, quoting *Quinto, supra* at 362-363.

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). Whether a person suffered a serious impairment of body function is a question of law for the court if: (i) there is no factual dispute about the nature and extent of the plaintiff’s injuries; or (ii) there is a factual dispute, but it is not material to the determination whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a).¹

It is not disputed that plaintiff sustained injuries constituting a serious impairment of body function in the first accident. In the second accident, she sustained muscle strain in her neck and upper back. X-rays were negative and there were no objective injuries noted. Although medical records showed that plaintiff complained of increased pain from the injuries sustained in the first accident, it is the plaintiff’s injuries, not her pain, that must be medically substantiated through objective manifestation, *Guerrero v Schoolmeester*, 135 Mich App 742, 748; 356 NW2d 251 (1984).²

In addition, plaintiff failed to introduce evidence establishing that her previous injuries actually worsened in any way that was objectively manifested, as was the case in *Washington v Van Buren Co Rd Comm*, 155 Mich App 527; 400 NW2d 668 (1986), and *Galli v Reutter*, 148 Mich App 313; 384 NW2d 43 (1985). Instead, plaintiff testified at deposition that, with medication, her symptoms resolved after a couple days and her condition was the same as it had been after the first accident. Although plaintiff’s doctor opined that the second accident aggravated plaintiff’s previous injuries, his unsworn averment is not admissible evidence and was insufficient to create an issue of fact. *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 321; 575 NW2d 324 (1998). Regardless, plaintiff’s doctor did not state that the second accident caused an objectively verifiable change in plaintiff’s condition. Accordingly, we find that the trial court did not err in granting defendant’s motion for summary disposition.

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin D. Doctoroff
/s/ Donald S. Owens

¹ Because the statutory definition of serious impairment of body function is the same as that adopted in *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982), it is appropriate to refer to *Cassidy* and its progeny in deciding this case. *Kern v Blethen-Coluni*, 240 Mich App 333, 342; 612 NW2d 838 (2000).

² See *supra*, n 1.