

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS J. PETROCIK,

Plaintiff-Appellee,

v

WILLIAM JAMES DOWLING,

Defendant-Appellant.

UNPUBLISHED

November 28, 2006

No. 269064

Marquette Circuit Court

LC No. 05-042234-NI

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

In this no-fault action,¹ defendant William Dowling appeals by leave granted the circuit court's order denying Dowling's motion for summary disposition under MCR 2.116(C)(10), and sua sponte granting plaintiff Thomas Petrocik partial summary disposition under MCR 2.116(I)(2). Because a question of material fact exists regarding the nature and extent of the injury to Petrocik's knee, we reverse and remand.

I. Basic Facts And Procedural History

This case arises out of an automobile/pedestrian accident. Petrocik was exiting a sporting goods store in the Marquette Mall when Dowling struck Petrocik with his vehicle. Petrocik filed an auto negligence suit against Dowling, alleging that he sustained a serious impairment of body function as a result of Dowling's negligence. Dowling moved for summary disposition of Petrocik's claims. The circuit court denied Dowling's motion and granted Petrocik partial summary disposition, concluding that, as a matter of law, Petrocik suffered a serious impairment of body function.

II. Summary Disposition

A. Standard Of Review

We review de novo a trial court's decision on a motion for summary disposition.² A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the

¹ MCL 500.3101 *et seq.*

² *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

complaint.³ When reviewing a motion for summary disposition, we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party.⁴

B. Question Of Fact

Under the no-fault act, “[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.”⁵ A serious impairment of body function is defined as “an objectively manifested impairment of an important body function that affects a person’s general ability to lead his or her normal life.”⁶

The issue whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function.⁷ Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.⁸

X-rays show that Petrocik sustained a fracture to his left knee. However, at oral argument, Dowling’s counsel conceded that a question of material fact exists regarding the nature and extent of Petrocik’s injury, specifically regarding whether Petrocik will have to have a knee replacement surgery in the future. As such, this case must be remanded for a jury to determine whether Petrocik sustained a serious impairment of body function.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Michael R. Smolenski

³ *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

⁴ *Id.*

⁵ MCL 500.3135(1).

⁶ MCL 500.3135(7).

⁷ MCL 500.3135(2)(a).

⁸ See *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004).