

STATE OF MICHIGAN
COURT OF APPEALS

HADIEH KATIP,

Plaintiff-Appellant,

v

ALI NASRI SAYED and NEDAL EL-SAYED,

Defendants-Appellees.

UNPUBLISHED

November 23, 2010

No. 292692

Wayne Circuit Court

LC No. 08-115695-NI

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

MEMORANDUM.

In this action to recover noneconomic damages under the no-fault act, plaintiff appeals as of right from a circuit court order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. BASIC FACTS

Plaintiff was injured on June 16, 2006, when her vehicle was hit from behind by a vehicle operated by defendant Sayed and owned by defendant El-Sayed while plaintiff was waiting to make a left turn. After the accident, plaintiff's left hand hurt and the police told her that she had a red mark on her head. She was transported by ambulance to the hospital, was treated in the emergency room, and released. The emergency room records note a contusion on her head. Plaintiff was unable to remember some of the details of the events after the accident, such as whether she spoke to anyone at the scene before the police arrived, what she told the police, why she did not talk to her sons at the scene, how she got home from the hospital, and which son was with her in the hospital.

Two weeks after the accident, plaintiff was treated by Dr. Rahim, who prescribed medications and physical therapy. Dr. Rahim's office records show approximately 29 visits that appear to be related to the accident in the following six months, and another 29 in the next six months. Dr. Rahim summarized the results of MRIs and EMGs in an affidavit. His diagnosis was "concussion head injury, cervical disc herniation compression of the cord, lumbar disc herniation L5 with compression right S1, cauda equine syndrome at L4-L5 and carpal tunnel syndrome." Dr. Rahim averred that he "felt that based on my diagnoses and treatment that she was disabled from her household activities, work, and attendant care."

Dr. Ahmad evaluated plaintiff on July 15, 2006. At that time, plaintiff complained of daily “severe headaches at frontal, bitemporal area with sharp and throbbing pains,” and “dizziness, blurry vision and gets loss of concentration.” Dr. Ahmad stated his diagnosis was “closed head injury with concussion, post concussion syndrome, posttraumatic cephalgia, cervical, thoracic, lumbar myofascial strain with radiculitis, and left arm pain injury.” His treatment consisted of “continue physical therapy and exercises. analgesics, muscle relaxants, and nerve block injection.” Like Dr. Rahim, Dr. Ahmad “felt that based on my diagnoses and treatment that she was disabled from her household activities, work, and attendant care.”

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10) on the basis that plaintiff’s injuries did not meet the statutory threshold for recovery of noneconomic damages because her impairment did not affect her general ability to lead her normal life under then controlling precedent *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004), reh den 471 Mich 1201 (2004). The trial court granted the defendant’s motion.

On appeal, a court’s decision on a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A motion under MCR 2.116(C)(10) tests the factual support for a claim. When reviewing a motion under MCR 2.116(C)(10), a court must examine the documentary evidence presented and, draw all reasonable inferences in favor of the nonmoving party, and determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The nonmoving party has the burden of establishing through affidavits, depositions, admissions, or other documentary evidence that a genuine issue of disputed fact exists. *Id.* A question of fact exists when reasonable minds can differ on the conclusions to be drawn from the evidence. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 398-399; 491 NW2d 208 (1992). Summary disposition is properly granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Maiden*, 461 Mich at 120.

Here, the only relevant question on appeal in this case is whether the trial court properly determined whether plaintiff’s alleged injuries, i.e. left arm and shoulder, her neck, and her head, together establish that that plaintiff suffered a serious impairment of body function. However, at the time the trial court rendered its decision, the controlling standard used to make this determination was *Kreiner v Fisher*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). *Kreiner* has since been reversed by the Supreme Court’s decision in *McCormick v Carrier*, ___ Mich ___, ___ NW2d ___ (2010). Since the Supreme Court in *McCormick* established a new standard for evaluating third-party claims under MCL 500.3135(1) and (7), we reverse the trial court’s decision in this regard and remand for further proceedings consistent with *McCormick*’s directives. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Brian K. Zahra

/s/ Pat M. Donofrio