

STATE OF MICHIGAN
COURT OF APPEALS

LADESHIA HALL and TRACY MOORE,
Plaintiffs-Appellants,

UNPUBLISHED
July 16, 2015

v

DAVID MIKO and CUMMINS BRIDGEWAY,
LLC,

No. 322036
Macomb Circuit Court
LC No. 2013-002501-NI

Defendants-Appellees,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendants' motion for summary disposition. Because a material question of fact remains regarding whether plaintiffs' suffered a serious impairment of body function, we reverse and remand for further proceedings.

This case arises from injuries sustained by plaintiffs as the result of an automobile accident with defendant David Miko. Relevant to the present appeal, plaintiffs alleged that they suffered "serious impairment of body function." Defendants moved for summary disposition, arguing that plaintiffs had not shown a "serious impairment of body function" within the meaning of MCL 500.3135(1) because they had not demonstrated: (1) an objectively manifested impairment that (2) affected their general ability to lead their normal lives. The trial court determined that there was evidence that plaintiffs had each suffered an objectively manifested impairment of an important body function, but that no genuine issue of material fact existed regarding whether plaintiffs' impairments had affected their general ability to lead their normal lives. Because the trial court concluded that plaintiffs' general ability to lead their normal lives had not been affected, the trial court determined that plaintiffs had not satisfied the serious impairment of a body function threshold set forth by MCL 500.3135(1). Consequently, the trial court granted defendant's motion for summary disposition. Plaintiffs now appeal as of right.

On appeal, plaintiffs argue that a genuine issue of material fact exists regarding whether their injuries affected their general ability to lead their normal lives, and, therefore, that a genuine issue of material fact exists regarding whether they sustained serious impairments of body function. We agree.

“This Court reviews de novo a trial court’s decision on a motion for summary disposition.” *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 115; 839 NW2d 223 (2013). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 206; 815 NW2d 412 (2012). In deciding a motion under MCR 2.116(C)(10), this Court “reviews the entire record, including affidavits, depositions, admissions, or other documentary evidence” in a light most favorable to the nonmoving party. *Gorman*, 302 Mich App at 115. “A motion for summary disposition under MCR 2.116(C)(10) may be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Braverman v Granger*, 303 Mich App 587, 596; 844 NW2d 485 (2014). “There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.” *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

A person injured through the ownership, operation, maintenance, or use of a motor vehicle must seek recovery in accordance with Michigan’s no-fault act, MCL 500.3101 *et seq.* *Diallo v LaRochelle*, __ Mich App __, __; __ NW2d __ (2015), slip op at 3. Subject to certain statutory exceptions, Michigan’s no-fault act abolished tort liability “arising from the ownership, maintenance, or use” of a motor vehicle. MCL 500.3135(3); *American Alternative Ins Co, Inc v York*, 470 Mich 28, 30; 679 NW2d 306 (2004). One of those exceptions, the serious impairment of body function threshold, is set forth in MCL 500.3135(1), which provides: “[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.” As defined by statute, a “serious impairment of body function” refers to “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(5).

The threshold question of whether a person has suffered a serious impairment of body function presents a question of law for the court to decide, provided that there is no factual dispute concerning the nature and extent of a person’s injuries that is material to determining whether the threshold standards have been satisfied. *McCormick v Carrier*, 487 Mich 180, 193; 795 NW2d 517 (2010); MCL 500.3135(2)(a). When there is a material factual dispute regarding the nature and extent of the person’s injuries, the issue should not be decided by the court as a matter of law. *McCormick*, 487 Mich at 193-194. If it is determined that the threshold issue may be decided by the court as a matter of law, the court must then consider whether the serious impairment threshold has been crossed. *Id.* at 215. There are three prongs that must be satisfied to establish a serious impairment of body function: “(1) an objectively manifested impairment (2) of an important body function that (3) affects the person's general ability to lead his or her

normal life.” *Id.* at 195. At issue in the present appeal is the third prong, namely whether plaintiffs’ injuries affected plaintiffs’ general ability to lead their normal lives.¹

Relevant to the third prong, an impairment affects a person’s general ability to lead his or her normal life when it “[has] an influence on some of the person’s capacity to live in his or her normal manner of living.” *Id.* at 202. To meet this standard, a person’s general ability to lead his or her normal life must be “affected,” but it need not be destroyed. *Id.* Consequently, a plaintiff need not necessarily show that the impairment caused the complete cessation of a pre-accident activity or lifestyle element; rather, courts should also consider “whether, although a person is able to lead his or her pre-incident normal life, the person’s general ability to do so was nonetheless affected.” *Id.* Further, “there is no quantitative minimum as to the percentage of a person’s normal manner of living that must be affected” and there is no temporal requirement regarding how long an impairment must last. *Id.* at 203. Ultimately, whether a person’s ability to lead his or her normal manner of living has been affected must be judged by comparison of the plaintiff’s life before and after the incident. *Id.* at 202; *Nelson v Dubose*, 291 Mich App 496, 499; 806 NW2d 333 (2011). This is a “subjective, person- and fact-specific inquiry” that must be decided on a case-by-case basis, bearing in mind that “what is important to one is not important to all[.]” *McCormick*, 487 Mich at 202, 215-216.

In this case, contrary to the trial court’s conclusions, plaintiffs presented evidence to establish a material question of fact in regard to whether their impairments affected their general ability to lead their normal lives. Specifically, plaintiff Tracy Moore testified during her deposition that her injuries affected her ability to sleep because she now tosses and turns in pain, she can no longer carry heavy things such as groceries without her husband’s assistance, she has difficulty climbing stairs, she could no longer do certain chores such as cleaning the bathtub like she used to, it hurts to laugh, and sexual activity is painful due to her injuries. Plaintiff Moore also testified that she could no longer walk for exercise—though she had done so before the accident—and she had not been able to exercise at all since the accident. While plaintiff Moore’s injuries may not have dramatically affected her overall lifestyle, sufficient evidence exists that her impairments had *some* effect on her general ability to lead her normal life. See *McCormick*, 487 Mich at 202-203. This evidence was sufficient to establish the existence of a material question of fact.

Likewise, plaintiff Ladeshia Hall testified at her deposition that her back, neck, and shoulder pain increased after the accident, causing her to miss numerous days of work. The fact that her doctor told her that she could return to work within a month of her deposition is irrelevant because there is no temporal requirement regarding how long an impairment must last.

¹ As noted *supra*, defendants moved for summary disposition based on the assertion that plaintiffs’ claim failed to satisfy the first and third prong. The trial court found that a material question of fact remained regarding the first prong, and defendants have not challenged this ruling on appeal. In addition, defendants did not challenge the second prong in the trial court, and the second prong is thus also not before us on appeal. Consequently, we focus our analysis solely on the third prong.

See *id.* at 203. Plaintiff Hall also testified that “anything” was liable to cause her pain when she used her right arm and that, for example, she had difficulty lifting items and could not do her physical therapy exercises because of the pain. She further testified that long car rides were uncomfortable for her, a fact that contributed to her decreased social life after the accident. Finally, plaintiff Hall noted that she had been a “very active person” and that she “really love[d] to walk” before the accident, but was now unable to walk for a long period of time. Again, this evidence was sufficient to create a question of fact regarding whether plaintiff Hall’s general ability to lead her normal life had been affected.

In contrast, the trial court characterized plaintiffs generally as having relatively “sedentary” lifestyles before and after the accident, it highlighted activities which plaintiffs remained able to perform or to perform to some degree after the accident, and it concluded that there had been no real change to their lifestyles following the accident. In other words, the trial court appears to have mistakenly focused broadly on whether there had been a general change to the overall activity level in plaintiffs’ normal lives when, instead, the correct inquiry is whether there has been an influence on the person’s *capacity* to live in her normal manner of living. *McCormick v Carrier*, 487 Mich at 202. “[T]he plain language of the statute only requires that some of the person’s *ability* to live in his or her normal manner of living has been affected, not that some of the person’s normal manner of living has itself been affected.” *Id.* Thus, plaintiffs were not required to establish that their normal lives had been completely destroyed, that they were totally unable to perform their normal activities, or that their manner of living was drastically altered. *Id.* at 202-203. It is enough that they presented evidence to establish that some of their general ability to lead their normal lives had been affected. *Id.* In sum, given the evidence presented by plaintiffs demonstrating that some of their general ability to lead their normal lives had been affected, the trial court erred by granting summary disposition on this basis.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Patrick M. Meter