

STATE OF MICHIGAN
COURT OF APPEALS

RUTH BARNETT-TEAGUE,

Plaintiff-Appellant,

v

MEER DEEN,

Defendant-Appellee.

UNPUBLISHED

July 24, 2018

No. 338785

Wayne Circuit Court

LC No. 16-007466-NI

Before: CAMERON, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

In this no-fault action, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We reverse and remand for further proceedings consistent with this opinion.

I. RELEVANT FACTS

This case arises out of a motor vehicle accident at the intersection of Fenkell Avenue and Linwood Street in Detroit. As plaintiff entered the intersection, defendant attempted to make a left turn from Fenkell Avenue onto Linwood Street without first checking to make sure traffic was clear. Plaintiff was unable to stop, and broadsided defendant's vehicle. As a result of the collision, plaintiff developed carpal tunnel syndrome, headaches, and neck and back issues. Plaintiff's injuries are not disputed on appeal.

Plaintiff filed suit against defendant, alleging that defendant had a duty to plaintiff and others to obey traffic laws and to exercise reasonable care while driving. Plaintiff alleged defendant violated that duty by negligently and recklessly failing to properly ascertain whether traffic was clear enough to allow him to proceed safely through the intersection, and as a result, injured plaintiff.

Defendant moved for summary disposition, pursuant to MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that plaintiff did not suffer a serious impairment of a body function because her injuries did not affect her ability to lead her normal life. None of plaintiff's injuries required surgery or influenced her ability to live as she had before the accident. Indeed, defendant argued, plaintiff's post-accident life was identical to her pre-accident life.

In response, plaintiff argued that her injuries, specifically her carpal tunnel syndrome, had affected her ability to lead her normal life because she had to work longer hours as a physician in order to provide her patients quality care and complete her charting. Plaintiff was unable to take on new patients, and only saw those patients that required immediate medical attention. Plaintiff further argued that her injuries had led to decreased functionality at work, leading her to consider giving up her medical practice all together and working for someone else. Plaintiff was also unable to properly care for her disabled mother, impaired her ability to cook and clean, and seriously affected her relationship with her husband.

At a hearing on defendant's motion, the parties argued consistently with their briefs. However, plaintiff also advanced the argument that because of the injuries she sustained in the accident, she was forced to end her employment with Mobile, M.D., which was a mobile medical practice that involved making house calls to patients in need. Defendant responded that plaintiff ended her employment with Mobile, M.D. not because she was unable to care for patients, but because her mother required more care, her daughter had recently given birth to a child, and plaintiff was spending more time working at her own private practice.

The trial court ultimately granted summary disposition in favor of defendant. The trial court concluded that the question at issue was "whether or not [plaintiff's injury] rose to a serious impairment of a body function, based upon the last prong of the test, which is [plaintiff's] ability to lead a normal life." The trial court noted that plaintiff's testimony indicated that she was "physically able to do things," and although she ended her employment with Mobile M.D., plaintiff's hours at her private practice continued and her salary did not decrease. In terms of plaintiff's ability to perform household tasks, the trial court stated that plaintiff was still able to perform those tasks, but her busy schedule prevented her from completing everything. Moreover, the trial court considered it important that plaintiff sought treatment for her injuries and within five months after the accident, plaintiff was "down to . . . a zero pain level and back to 70 percent." The trial court stated:

All of the deposition testimony, which was gleaned from the plaintiff, indicates that she was able to do things . . . and she continued to do things and she really . . . appeared to be acting as a superwoman. Not only did she hold down her job, but she also assisted with the care of her new grandchild, as well as assisted with the care of her aging mother, until the family made the decision to place [their mother] in a nursing home. The only thing that remotely symbolizes something is that she has some sort of complication with writing her notes, but she still does write her notes. The Court also notes that . . . she's doing everything.

Based upon plaintiff's testimony, "and even taking the evidence in the light most favorable to the nonmoving party," the trial court concluded that plaintiff's injuries did not "rise to a level of a serious impairment of a body function, to the extent that it interferes . . . with [plaintiff's] ability to lead a normal life," and granted summary disposition in favor of defendant. This appeal followed.

II. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Wigfall v City of Detroit*, ___ Mich App ___, ___; ___ NW2d ___ (2017) (Docket No. 333448); slip op at 2. "A motion for summary disposition under MCR 2.116(C)(10) "tests the factual sufficiency of the complaint." *Shinn v Mich Assigned Claims Facility*, 314 Mich App 765, 768; 887 NW2d 635 (2016) (citation omitted). Decisions on such a motion are reviewed de novo. *Id.* (citation omitted). This Court considers the "pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition "is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 423; 864 NW2d 609 (2014) (citation and quotation marks omitted). When considering a motion for summary disposition, the trial court may not make findings of fact, "weigh the evidence[,] or make determinations of credibility when deciding a motion for summary disposition." *Innovative Adult Foster Care*, 285 Mich App at 480.

III. ANALYSIS

A. CONSTITUTIONALITY OF APPLICATION OF MCL 500.3135(A)

First, plaintiff argues that under *McCormick v Carrier*, 487 Mich 180; 795 NW2d 517 (2010), it would be unconstitutional to apply MCL 500.3135 in a "way that would lead to summary disposition if summary disposition would not be proper under MCR 2.116(C)(10)." However, plaintiff has abandoned this issue on appeal.

This Court has many times made it clear that,

[a] party may not leave it to this Court to search for authority to sustain or reject its position. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. Argument must be supported by citation to appropriate authority or policy. An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. [*Bank of America, NA v Fidelity Nat Title Ins Co*, 316 Mich App 480, 517; 892 NW2d 467 (2016) (citations and quotation marks omitted).]

Although plaintiff provides citation to *McCormick*, she simply announces her position that "if a motion for [s]ummary [d]isposition in a No Fault threshold case cannot be defeated under MCR 2.116(C)(10), then the court should not deny it under MCL 500.3135(2)." However, plaintiff fails to provide any analysis with respect to her claim. Indeed, plaintiff provides no argument regarding why applying MCL 500.3135(2) in this case would unconstitutionally conflict with MCR 2.116(C)(10). Therefore, plaintiff has abandoned the issue on appeal, and therefore we decline to address it. See *Bank of America, NA*, 316 Mich App at 517.

B. PLAINTIFF'S ABILITY TO LEAD HER NORMAL LIFE

Next, plaintiff argues that there is a genuine issue of material fact regarding whether her injuries affected her general ability to lead her normal life, and therefore the trial court erroneously granted summary disposition in favor of defendant. We agree.

“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 a body function, or permanent serious disfigurement.” MCL 500.3135. MCL 500.3135(7) defines a “serious impairment of a body function” as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” In *McCormick*, our Supreme Court provided the following guidance for determining whether a plaintiff has made a sufficient showing of a threshold injury to survive summary disposition:

To begin with, the court should determine whether there is a factual dispute regarding the nature and extent of the person’s injuries, and, if so, whether the dispute is material to determining whether the serious impairment of body function threshold is met. If there is no factual dispute, or no material factual dispute, then whether the threshold is met is a question of law for the court. [*McCormick*, 487 Mich at 215.]

“Whether someone has suffered a serious impairment is ‘inherently fact-and circumstance-specific and [the analysis] must be conducted on a case-by-case basis.’ ” *Chouman v Homeowners Ins Co*, 293 Mich App 434, 441; 810 NW2d 88 (2011), quoting *McCormick*, 487 Mich at 215. Additionally, a plaintiff’s impairments need not be permanent. *McCormick*, 487 Mich at 203.

In *McCormick*, the Michigan Supreme Court held that in order to prove a serious impairment of a body function, a plaintiff must show:

(1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions) (2) of an important body function (a body function of value, significance, or consequence to the injured person) that (3) affects the person’s general ability to lead his or her normal life (influences some of the plaintiff’s capacity to live in his or her normal manner of living). [*Id.* at 215.]

“However, there is no bright-line rule or checklist to follow in making that evaluation.” *Chouman*, 293 Mich App at 441 (citation omitted).

On appeal, only the third prong of *McCormick* is at issue, i.e., whether the serious impairment affected the “person’s general ability to lead his or her normal life.” *McCormick*, 487 Mich at 215. In *Nelson v Dubose*, 291 Mich App 496, 498-499; 806 NW2d 333 (2011), this Court explained:

McCormick shifted the focus from the injuries themselves to how the injuries affected the plaintiff’s body function. *McCormick*, 487 Mich at 197. This shift

eased the burden on the plaintiff to show how the impairment prevented the plaintiff from leading a normal life. Now, the plaintiff has to show that the plaintiff's ability to lead a normal life has been affected by comparing the plaintiff's life before and after the injury. *Id.* at 200, 202-203.

With respect to the third prong, to determine “the effect or influence that the impairment has had on a plaintiff’s ability to lead a normal life necessarily requires a comparison of the plaintiff’s life before and after the incident.” *McCormick*, 487 Mich at 202. Important to making this comparison is the fact that “the statute merely requires that a person’s general ability to lead his or her normal life has been *affected*, not destroyed.” *Id.* Therefore, “courts should consider not only whether the impairment has led the person to completely cease a pre-incident activity or life element, but also 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.* Additionally, “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.* “[W]hile the extent to which a person’s general ability to live his or her normal life is affected by an impairment is undoubtedly related to what the person’s normal manner of living is, there is no quantitative minimum as to the percentage of a person’s normal manner of living that must be affected.” *Id.* at 202-203. Lastly, there is no “express temporal requirement as to how long an impairment must last in order to have an effect on the person’s general ability to live his or her normal life.” *Id.* at 203 (quotation marks omitted).

Viewing the evidence in the light most favorable to plaintiff, the trial court erred in concluding that plaintiff’s injuries did not affect her general ability to lead *her* normal life. Plaintiff indicated that after the accident, she was physically able to do certain things, such as walking, cleaning, cooking, and spending time with her grandchildren, but had not done them because of her busier schedule. Plaintiff’s busier schedule was the result of her needing to work longer hours at her medical practice because of her injuries. Although plaintiff cared for her disabled mother, who had dementia, and assisted her daughter with plaintiff’s newborn granddaughter, plaintiff stated that her injuries required her to work longer hours in her private practice, and reduced the number of patients she felt comfortable scheduling.

At the time of plaintiff’s accident, she was caring for her mother. Plaintiff stayed with her mother at night and received a \$200 stipend from the State of Michigan. After the accident, plaintiff attempted to continue caring for her mother, until June 2015, when plaintiff’s mother was moved to a nursing home. Plaintiff indicated that she had to stop caring for her mother after the accident because she was taking medication that made her sleepy and because she did not have the strength to lift her mother when required due to her injuries. Additionally, even though plaintiff was physically capable of cooking and cleaning, she asserted that her injury impaired her ability to cook and clean because she was tired from work and simply wanted to rest. Plaintiff also indicated that her injuries have affected the intimacy between her and her husband, which led to them “not communicating as much.”

Additionally, even though plaintiff continued to operate her private internal medicine practice four days a week, as she did before the accident, there was record evidence and deposition testimony demonstrating that plaintiff's injuries prevented her from taking on new patients, leading to the practice slowing down. Indeed, plaintiff's injuries even caused her to consider shutting her practice down entirely. Plaintiff's injuries required her to take short breaks throughout the day due to pain and numbness and work longer hours in order to get everything done. This increase in time spent at the office prevented plaintiff from doing things she was otherwise capable of doing, including going on walks, cleaning, cooking, spending time with her grandchildren, and fostering her relationship with her husband. Therefore, although defendant and the trial court relied on the fact that plaintiff continued working in her private practice as she did before the accident, we conclude that plaintiff created a question of fact regarding whether her ability to practice medicine was affected by her injuries. *McCormick*, 487 Mich at 202.

Additionally, plaintiff presented evidence that her injuries affected her ability to continue working with Mobile, M.D., which in turn, affected her income. Although plaintiff indicated that her income remained relatively the same before and after the accident, before the accident, plaintiff earned anywhere between \$500 and \$900 every Wednesday that she worked with Mobile M.D. When plaintiff's schedule permitted her to work the occasional Friday with Mobile M.D., she made another roughly \$400. Defendant and the trial court pointed to the fact that plaintiff had to take care of her mother and assisted with caring for her granddaughter, as well as increased hours at her private practice, as reasons for plaintiff quitting Mobile M.D. However, plaintiff's testimony demonstrates that she quit Mobile M.D. because of the pain and numbness that she experienced while performing Mobile M.D. work. This pain and numbness was the result of the injuries that she suffered in the November 2014 accident. Accordingly, plaintiff established a question of fact regarding whether her injuries prevented her from leading her normal life with respect to her involvement with Medical, M.D. Further, defendant's contention that plaintiff was doing the same type of work at Mobile M.D. as she was in her private practice, and therefore, her quitting Mobile M.D. had nothing to do with her physical ability to treat patients ignores the difference between driving to and from work and spending all day driving around Detroit, Pontiac, and Troy making house calls. Because plaintiff presented evidence indicating that her injuries led her "to completely cease a pre-incident activity or life element," in the form of working for Mobile M.D., there remains a question of fact regarding whether plaintiff's general ability to lead her normal life was affected by the accident. *Id.* at 202.

Given our Supreme Court's directive in *McCormick* that "there is no quantitative minimum as to the percentage of a person's normal manner of living that must be affected," as well as MCL 500.3135's simple requirement that a person's general ability to lead his or her normal life "be *affected*, not destroyed," we conclude that plaintiff presented sufficient evidence in response to defendant's motion for summary disposition to create a genuine issue of material fact regarding whether plaintiff's serious impairment of a bodily function affected her ability to lead her normal pre-accident life. Accordingly, we conclude that the trial court erred in granting summary disposition in favor of defendant.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron

/s/ Kathleen Jansen

/s/ Peter D. O'Connell