

STATE OF MICHIGAN
COURT OF APPEALS

LISA LEE ARRELL,

Plaintiff-Appellant,

v

LLOYD G. EDWARDS, JR.,

Defendant-Appellee.

UNPUBLISHED

April 22, 2021

No. 353594

Ionia Circuit Court

LC No. 2019-033620-NI

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

In this action under the no-fault insurance act, MCL 500.3101 *et seq.*, plaintiff appeals as of right an order granting summary disposition to defendant under MCR 2.116(C)(10). On appeal, plaintiff argues that the trial court erred by granting defendant summary disposition because (1) there was a genuine issue of material fact whether plaintiff's general ability to lead her normal life was affected, (2) the trial court improperly weighed the credibility of plaintiff's testimony, and (3) the trial court improperly considered facts not in evidence. We agree with the first argument, and therefore, reverse the trial court's order granting defendant's motion for summary disposition and remand for further proceedings.

In June 2017, plaintiff stopped at a red light and, while attempting to turn right into an intersection, plaintiff was rear-ended by defendant. Plaintiff initially refused medical treatment, and later drove herself to the emergency department of a local hospital. The accident caused plaintiff to have back surgery. Plaintiff filed suit against defendant, and after discovery, defendant moved for summary disposition. The crux of defendant's argument was that plaintiff was disabled before the accident, so there was no measurable change in her postaccident life. The trial court granted defendant's motion for summary disposition, finding that there was no genuine issue of material fact that plaintiff had not suffered a serious impairment of a body function. After entry of a final order dismissing plaintiff's complaint, plaintiff appealed as of right.

Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "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.” *Id.* In ruling on the motion, the trial court must consider not only the pleadings, but also any affidavits, depositions, admissions, and other evidence submitted by the parties. MCR 2.116(G)(5). In responding to a motion under MCR 2.116(C)(10), the opposing party “may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth the specific facts showing that a genuine issue of material fact exists.” *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

We review de novo a trial court’s decision to grant summary disposition. *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). “In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition.” *Id.* (quotation marks and citation omitted). The trial court should not weigh credibility or make findings of fact. *Id.* If the evidence that the trial court reviews is conflicting, summary disposition should not be granted. *Id.* However, “[i]f the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.” *Quinto*, 451 Mich at 363.

Under the no-fault tort liability threshold, a defendant is liable for noneconomic loss caused by the defendant’s ownership, maintenance, or use of a motor vehicle only if the plaintiff has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1). Plaintiff did not die from the accident, and there is no allegation that she suffered a permanent serious disfigurement. Therefore, the focus is on whether plaintiff suffered a serious impairment of body function.

The no-fault statute contains the definition of a serious impairment of body function, which means an impairment that satisfies all the following requirements:

- (a) It is objectively manifested, meaning it is observable or perceivable from actual symptoms or conditions by someone other than the injured person.
- (b) It is an impairment of an important body function, which is a body function of great value, significance, or consequence to the injured person.
- (c) It affects the injured person’s general ability to lead his or her normal life, meaning it has had an influence on some of the person’s capacity to live in his or her normal manner of living. Although temporal considerations may be relevant, there is no temporal requirement for how long an impairment must last. This examination is inherently fact and circumstance specific to each injured person, must be conducted on a case-by-case basis, and requires comparison of the injured person’s life before and after the incident. [MCL 500.3135(5); see also *McCormick v Carrier*, 487 Mich 180, 195-209; 795 NW2d 517 (2010).]

To show that the plaintiff’s ability to lead his or her normal life has been affected, we compare the plaintiff’s life before and after the injury. *Nelson v Dubose*, 291 Mich App 496, 499; 806 NW2d 333 (2011). The plaintiff’s general ability to lead his or her normal life only needs to be “affected, not destroyed.” *McCormick*, 487 Mich at 202. “[C]ourts should consider not only whether the impairment has led the person to completely cease a pre-incident activity or lifestyle

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." *Piccione v Gillette*, 327 Mich App 16, 21; 932 NW2d 197 (2019) (quotation marks and citation omitted).

As noted, defendant's main argument was that plaintiff was disabled before the accident, and that her life had not been affected by the accident as she continues to be disabled. Defendant further argued that since the accident, plaintiff married, enrolled in college courses, and was riding motorcycles, so her life actually has been better since the accident. However, although plaintiff was disabled before the accident, there remains questions of fact to whether her ability to lead her normal life was affected.

Plaintiff testified that she enrolled in Montcalm Community College before the accident, but after the accident she had to drop out of school because she was in too much pain to sit in class. Plaintiff also testified—and her husband confirmed—that her husband had to help her prepare food and do other household chores because she was in a lot of pain after the accident. And, plaintiff testified, before the accident she did not need help caring for herself around the house, with hygiene, or preparing meals. Plaintiff also testified that she could no longer drive a vehicle after the accident.

Also presented to the trial court was the testimony of plaintiff's husband that plaintiff experienced many changes after the accident, including that since the accident he and plaintiff have substantially reduced sexual relations because of plaintiff's pain. Additionally, plaintiff's husband testified that before the accident plaintiff and her husband would do recreational activities together, such as going to "Craig's Cruisers," bowling, and going on motorcycle rides together; since the accident, they have only been able to go on a few motorcycle rides because plaintiff has trouble getting on and off the motorcycle. Plaintiff's husband also testified that since the accident plaintiff walked slower and with a limp, no longer goes on walks with him, and no longer cuts the lawn or removes snow from the driveway, while she frequently did so before the accident.

The foregoing testimony places in question whether plaintiff's postaccident impairments sufficiently altered plaintiff's ability to live her normal life such that she suffered a serious impairment of a body function. Testimony from plaintiff and her husband¹ describe numerous activities that plaintiff engaged in before the accident that she can no longer perform after the accident, or at least not as frequently as she once had. "Viewing these facts in the light most favorable to plaintiff, a jury could conclude that [the plaintiff's] general ability to lead [her] normal life was affected by the impairment." *Piccione*, 327 Mich App at 22.

Although defendant presented some evidence to suggest that plaintiff's life was better after the accident because, before the accident, she applied for disability and was unable to perform many self-care tasks and that her husband performed all the household tasks, that evidence

¹ Testimony alone can be sufficient to establish a question of fact, *Kenkel v Stanley Works*, 256 Mich App 548, 558; 665 NW2d 490 (2003), and impairments that are observable by others can satisfy the *McCormick* prongs, see *Patrick*, 322 Mich App at 609.

conflicts with the testimony presented by plaintiff and her husband. For example, defendant alleged that plaintiff needed a guardian to take care of her finances before the accident, but plaintiff testified that she has never had a guardian. Defendant argued that plaintiff enrolled in college after the accident, so her life was getting better, but plaintiff testified that she enrolled in college before the accident.

Further, defendant relies on old medical records and evaluations, some that were approximately 10 years old at the time of the deposition, and evidence submitted by plaintiff contradicted those old records. For example, defendant alleged that plaintiff was homeless before the accident, but plaintiff testified that she was homeless six to seven years before the accident, not immediately before it as defendant implied. Therefore, summary disposition was improperly granted, as a genuine issue of material fact existed regarding whether plaintiff suffered from a serious impairment of a body function.²

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

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Leticia

² We agree with plaintiff that there is nothing in the record that speaks of the details of plaintiff's wedding, i.e., whether plaintiff planned a big wedding celebration or did not need a cane to walk down the aisle. The trial court must confine its review to the record evidence and make all reasonable inferences for plaintiff. See *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).