

STATE OF MICHIGAN  
COURT OF APPEALS

MARILYN A. DeFOUR and  
NORMAN H. DeFOUR, her husband,

DEC 8 1986

Plaintiffs-Appellants,

v

No. 88785

KEITH BUSH,

Defendant-Appellee.

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BEFORE: M.H. Wahls, P.J., R.B. Burns, and M. Warshawsky\*, JJ.

PER CURIAM

Plaintiff, Marilyn DeFour, appeals as of right from a circuit court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10), on the ground that plaintiff did not suffer a "serious impairment of body function" within the meaning of MCL 500.3135; MSA 24.13135. The trial court determined that there was no material factual dispute in this case and that the no-fault threshold requirements had not been met. We affirm.

The cardinal case in this area is Cassidy v McGovern, 415 Mich 483; 330 NW2d 22 (1982), reh den, 417 Mich 1104 (1983). In Cassidy, the Supreme Court stated:

"When there is no factual dispute regarding plaintiff's injuries, or when any factual dispute does not straddle the line demarcating those injuries which constitute serious impairment of body function, the trial court is to decide as a matter of law whether plaintiff has suffered a serious impairment of body function." Id. 488.

It is well established that in determining whether an injury is sufficiently serious to meet the threshold requirement, courts are to look to the effect of the injury on the individual's ability to lead a normal life. Braden v Lee, 133 Mich App 215, 218; 348 NW2d 63 (1984), Walker v Caldwell, 148 Mich App 827, 832; 385 NW2d 703 (1986). The inquiry should focus on the individual's ability to perform common day to day activities. See Routley v Dault, 140 Mich App 190, 195; 363 NW2d 450 (1984), lv gtd, 422 Mich 935 (1985). The seriousness of an

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\*Circuit judge, sitting on the Court of Appeals by assignment.

injury must be considered in conjunction with the other threshold requirements for a tort action due to death or permanent serious disfigurement. Cassidy, supra, 503.

The test to determine whether summary disposition is proper under MCR 2.116(C)(10) is whether the record which might be developed would leave open an issue upon which reasonable minds might differ, giving the benefit of reasonable doubt to the opposing party. Rizzo v Kretschmer, 389 Mich 363, 371-373; 207 NW2d 316 (1973). To grant summary disposition, the court must be satisfied that it would be impossible for the claim to be supported at trial because of some deficiency which cannot be overcome. Id.

In this case there is no dispute which is material to the determination of whether plaintiff has suffered a serious impairment of body function. Following an auto accident, she spent two and one-half hours in the hospital. Plaintiff was diagnosed as having a broken clavicle, a cracked rib and a broken finger. The hospital prescribed a Figure 8 harness and a sling. Plaintiff's condition progressively improved. In fact, her doctor noted that she was much improved within one month of the accident. Further, plaintiff stated she was able to swim, golf and generally lead a normal life. We are unable to conclude that her injuries are sufficiently serious to withstand summary disposition. See Walkow v Eubank, 139 Mich App 1, 360 NW2d 320 (1984); Burk v Warren, after remand 137 Mich App 715; 359 NW2d 541 (1984); Ulery v Coy, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (1986) (Docket No. 88870), lv to appeal filed, \_\_\_ Mich \_\_\_ (8-11-86) (broken clavicle in all of these cases did not constitute serious impairment).

Affirmed.

/s/ Myron H. Wahls  
/s/ Robert B. Burns  
/s/ Meyer Warshawsky