

STATE OF MICHIGAN
COURT OF APPEALS

DONALD TRIMBLE, and DENA J. BREWER,
Plaintiffs-Appellants,

UNPUBLISHED
February 11, 2014

v

BRIAN A. SHEPARDSON, and CENTRAL
TRANSPORT INTERNATIONAL, INC.,

No. 311572
Hillsdale Circuit Court
LC No. 11-000660-NI

Defendants-Appellees.

Before: WHITBECK, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(10). Because we conclude that plaintiffs failed to generate a genuine issue of material fact regarding whether either plaintiff suffered a serious impairment of body function, we affirm.

On August 31, 2009, plaintiffs Donald Trimble and Dena J. Brewer were in a vehicle driven by Trimble. Trimble stopped to allow a car in front of him to turn left. While stopped, Trimble's vehicle was struck from behind by a truck driven by defendant Brian A. Shepardson and owned by defendant Central Transport International, Inc. Following the accident, Trimble complained of neck pain and Brewer complained of neck and lower back pain. Thereafter, plaintiffs received medical treatment for their injuries. Eventually, Trimble and Brewer filed the present action, claiming that they suffered a serious impairment of body function. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that Trimble and Brewer had not provided evidence to meet the necessary threshold under MCL 500.3135(1). After hearing arguments from both parties, the trial court granted summary disposition in favor of defendants. This appeal ensued.

On appeal, plaintiffs argue that the trial court erred by determining as a matter of law that neither plaintiff suffered a serious impairment of body function.

A trial court's decision regarding a motion for summary disposition is reviewed de novo. *Jimkoski v Shupe*, 282 Mich App 1, 4; 763 NW2d 1 (2008). A motion for summary disposition pursuant to MCR 2.116(C)(10) "tests the factual sufficiency of the complaint." *Joseph v Auto Club Ins Assoc*, 491 Mich 200, 206; 815 NW2d 412 (2012). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings,

depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion.” *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition is proper under this subsection where there is no “genuine issue regarding any material fact.” *Id.*

MCL 500.3135(1) states that, “[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.” MCL 500.3135(5) defines a “serious impairment of 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 v Carrier*, 487 Mich 180, 194-195; 795 NW2d 517 (2010), the Court held that the statutory language requires proof of three prongs, all three of which are necessary 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.” The failure to prove any one prong is fatal to a plaintiff’s ability to meet the serious impairment threshold. *See id.* at 195. The question of whether an individual meets this statutory threshold is a question of law for the trial court to decide when there is “no factual dispute regarding ‘the nature and extent of the person’s injuries’ that is material to determining whether the threshold standards are met.” *Id.* at 193; MCL 500.3135(2)(a).

In their motion for summary disposition, defendants did not dispute the first two prongs of the test set forth by *McCormick*. Rather, defendants argued only that plaintiffs failed to demonstrate a genuine issue of material fact regarding the third prong, which addresses whether plaintiffs’ injuries affected their general ability to lead their normal lives. Specifically, defendants maintained that the evidence demonstrated that both plaintiffs were able to do the same things before and after the accident; thus, the accident did not influence either plaintiffs’ capacity to live his or her normal life. The trial court agreed with defendants, and on that basis, granted summary disposition.

With respect to the third prong, in *McCormick*, 487 Mich at 202, the Court held that according to the plain language of the statute, “the common understanding of to ‘affect the person’s ability to lead his or her normal life’ is to have an influence on some of the person’s capacity to live in his or her normal manner of living.” The Court further held that the test “requires a subjective, person- and fact-specific inquiry that must be decided on a case-by-case basis.” *Id.* Moreover, the Court recognized that determination of “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.” *Id.*

On appeal, plaintiffs do not specifically argue that their ability to lead their normal lives has been affected. Neither plaintiff points to a specific activity of daily life that he or she is unable to engage in as a result of the injuries sustained in this accident. Rather, plaintiffs focus on the nature and extent of their injuries and treatment, and appear to argue that the resulting ongoing treatment, which has lasted for more than three years and has “no end in sight,” has affected their ability to lead their normal lives. However, the fact that both plaintiffs underwent lengthy treatments that are still ongoing as a result of the injuries sustained in this accident does not establish that the injuries affected their abilities to lead their normal lives. The fact that an

injured person must receive treatment for an injury is separate from whether that injured person's normal life has been affected by the injury. Here, neither plaintiff substantiated with evidence that their injuries affected their general abilities to lead their normal lives.

The evidence shows that before the accident in this case, Trimble was deemed disabled by the Social Security Administration (SSA), did not work, received disability benefits, suffered from pain issues regarding his neck and back, and was on medication. In response to defendants' summary disposition motion, Trimble offered no evidence that the accident-related injuries or treatments produced a change in his daily activities.

Similarly, the evidence in this case shows that before the accident Brewer was deemed disabled by the SSA, did not work, received disability benefits, suffered from pain issues, and was on medication. When specifically questioned at her deposition regarding "activities that you don't do now because of the accident that you were able to do before," Brewer offered only that she could not hold her hands over her head without having pain. Brewer presented no testimony that the pain caused by this action influenced her ability to lead her normal life. In response to defendants' motion for summary disposition, Brewer similarly neglected to proffer any evidence of disability related to the accident. Because no evidence suggests that either plaintiff's injuries precipitated any change in plaintiffs' capacities to live in their normal, pre-accident manners, we conclude that defendants were entitled to summary disposition.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher