STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL MIRLING,

Plaintiff-Appellant,

v

JAMES MICHAEL CARELL, JR. and S&R EQUIPMENT CO., INC.,

Defendants-Appellees.

UNPUBLISHED
January 30, 2001

No. 216843
Oakland Circuit Court
LC No. 97-539617-NI

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court ruling granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was thrown from his bicycle when it was struck by defendants' vehicle. He lost an upper incisor; consequently, he wore a temporary replacement for two years. Then a permanent replacement was implanted. Plaintiff complained that the replacements somewhat interfered with his ability to eat and made him feel self-conscious. He also restricted his involvement in sports to prevent further injury. The trial court ruled that, under the standard enunciated in *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986), plaintiff did not have a serious impairment of any bodily function and granted that aspect of defendants' motion.[1]

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must

[1] The court did allow plaintiff's claim of permanent serious disfigurement to go to trial, but granted a directed verdict for defendants at the close of plaintiff's case in chief. That ruling is not at issue here.

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

consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

A tortfeasor is liable for noneconomic damages for automobile negligence if the injured person suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1); MSA 24.13135(1). A serious impairment of body function is defined as "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(7); MSA 24.13135(7). Whether a person suffered a serious impairment of body function is a question of law for the court if there is no factual dispute about the nature and extent of the plaintiff's injuries or there is a factual dispute but it is not material to whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a); MSA 24.13135(2)(a). "[T]he Legislature overturned the Supreme Court's *DiFranco* decision by codifying the tort threshold injury standards of *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982), overruled by *DiFranco, supra*." *Kern v Blethen-Coluni*, 240 Mich App 333, 338; 612 NW2d 838 (2000). Therefore, the trial court erred to the extent it relied on *DiFranco* in reaching its decision. Because the statutory definition of serious impairment of body function is the same as that adopted in *Cassidy*, it is appropriate to refer to *Cassidy* and cases decided thereunder in deciding this case. *Id.* at 342.

By losing a tooth, plaintiff suffered an objectively manifested injury. That injury interfered to an extent with an important body function: eating. That body function was not, however, seriously impaired. Plaintiff could still eat solid foods with the temporary replacement, he just had to remove it while eating or avoid some foods, like sticky candy, or cut other foods into bite-sized pieces. The same is true for the permanent replacement. Plaintiff could still eat, but cut some foods into bite-sized pieces and chewed predominantly on one side of his mouth. He limited some of his activities because of concern about reinjuring his mouth, but he was able to finish school and continue his employment. Therefore, while the injury did affect his life to a limited extent, it did not significantly affect his ability to lead a normal life. *Owens v Detroit*, 163 Mich App 134, 138; 413 NW2d 679 (1987); see, also, *Franz v Woods*, 145 Mich App 169, 177; 377 NW2d 373 (1985); *Denson v Garrison*, 145 Mich App 516, 520; 378 NW2d 532 (1985); *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984). Because the trial court reached the right result, albeit for the wrong reason, we will not reverse. *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994).

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew