

STATE OF MICHIGAN
COURT OF APPEALS

COREY JAY FRENCH and CHERYL LYNN
FRENCH,

Plaintiff-Appellants,

v

SHARON SUE MURPHY,

Defendant-Appellee.

UNPUBLISHED
May 12, 2000

No. 214655
Ingham Circuit Court
LC No. 97-086104 NI

Before: Doctoroff, P.J., and O'Connell and Wilder, JJ.

PER CURIAM.

In this negligence action arising out of an automobile accident, plaintiffs appeal as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs argue that the trial court erred in finding that no genuine issue of material fact existed with respect to whether plaintiff Cheryl French (hereinafter "plaintiff") suffered a serious impairment of a body function as required by MCL 500.3135; MSA 24.13135. We affirm.

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), the trial court must consider the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Smith, supra*; *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The motion should be granted if the affidavits or other documentary evidence show that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith, supra* at 454-456; *Quinto, supra*.

MCL 500.3135; MSA 24.13135 provides:

(1) 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.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after 120 days after the effective date of this subsection, all of the following apply:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement. However, for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury.

The phrase "serious impairment of a body function" within the context of the statute means "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).

Plaintiffs contend that the trial court erred in not making specific findings with regard to whether the injury to Cheryl French was (1) objectively manifested, (2) impaired an important body function, and (3), affected her general ability to lead her normal life. They argue that the court should have specifically indicated which element plaintiffs failed to satisfy. However, plaintiffs' argument lacks merit. The thrust of the trial court's ruling was that the evidence demonstrated that plaintiff's injuries lacked the severity and permanency necessary to have impaired an important body function.

Plaintiff was injured in a car accident in February, 1996. Thereafter, she complained of pain in her neck, back, hip, elbow, arm, and hand, as well as headaches. Plaintiff was restricted from doing certain household chores, such as laundry, and needed help running the day care center she operated in her home, for six weeks after the accident. Over the next several months, plaintiff was recovering from her injuries, and her pain became less constant, but her problems walking, taking care of her children, and performing household chores continued.

In August, 1996, plaintiff was involved in another car accident, from which the instant case arose. Plaintiff was stopped at a stoplight when she was rear-ended by defendant's vehicle. After the accident, plaintiff immediately began to have pain in her neck, back, and arm. She also experienced headaches and later began having pain in her hips. Plaintiff did not seek medical treatment immediately

after the accident, but went to a chiropractor later that day. Plaintiff testified that, after the second accident, she had trouble walking “any kind of distance at all” because of the pain in her hips and legs, and that it was difficult for her to do household chores and to care for her children. Plaintiff further testified that she had to hire someone to help her with the day care center. However, plaintiff also testified that she was able to “run after kids all day long.” Plaintiff’s work as the supervisor of a home for the mentally ill was not affected by her injuries. At the time of her deposition, plaintiff continued to have pain in her neck, back, and hips, and could not sit or walk without pain. Plaintiff also suffered from sleeplessness and a fear of driving in cars after the second accident.

The day after the accident, Dr. Susan Murray diagnosed plaintiff with a cervical strain. Dr. Murray indicated that plaintiff had decreased flexion and extension of the neck, decreased lateral bending, and moderate spasm and tenderness in the spine and neck. Nine days later, Dr. Murray assessed plaintiff’s condition as “somatic dysfunction,”¹ noting that plaintiff continued to have mild spasm and tenderness along her spine and neck. Dr. Murray prescribed muscle relaxers and anti-inflammatory medication, and recommended physical therapy. Plaintiff saw Dr. Murray’s physician’s assistant on September 24, 1996. The physician’s assistant noted that, upon leaving the room, plaintiff was “able to quickly grab [daughter] leaving in wrong direction and bend quickly forward and without apparent distress to pick up a sticker that had fallen on the floor.” Dr. Murray testified that the actions described by her assistant were inconsistent with plaintiff’s complaints.

Thereafter, plaintiff attended six physical therapy sessions. The physical therapist noted that plaintiff had a normal range of motion in all cervical trunks and planes, but that plaintiff experienced pain in the end ranges of trunk flexion in the lower back. The therapist further commented that “Cheryl has improved significantly overall and is independent with her home exercises. Her spinal mechanics are in the normal range and the stabilizing exercises should maintain normal function.” The physical therapist recommended that plaintiff did not need more physical therapy. On January 21, 1997, plaintiff began seeing Dr. Tanveer Syed. Dr. Syed noted “mild tenderness to palpation and percussion in the lower lumbar vertebrae and over the right sacroiliac joint.” Dr. Syed further noted “[s]tatus post motor vehicle accident with osteoarthritis of the spine, musculoskeletal pain syndrome with cervical strain.” Plaintiff again attended several physical therapy sessions in March, 1997. The physical therapist noted that plaintiff reported less back pain and improved function, and that she had a full range of movement in all trunk planes and less spasm during palpation.

In May, 1997, plaintiff began seeing Dr. Scott Randall. After plaintiff’s first visit on May, 15, 1997, Dr. Randall diagnosed plaintiff with somatic dysfunction and chronic back problems. In early June, 1997, Dr. Randall’s physical examination of plaintiff revealed a minimal decrease in muscle tension around her spine. Dr. Randall’s deposition testimony indicated that he did not detect muscle spasms, which are more serious than mere muscle tension. Dr. Randall saw plaintiff again in October, 1997. At that visit, plaintiff continued to complain of back and neck pain. Dr. Randall’s impression was that plaintiff had cervical, thoracic, and lumbar strain and continued somatic dysfunction. Dr. Randall advised plaintiff that she could engage in whatever activities she could tolerate.

Plaintiff underwent numerous diagnostic tests after the second accident. On September 6, 1996, plaintiff had x-rays of her thoracic and lumbosacral spine. The radiologist noted that plaintiff's vertebral segments were aligned properly. He further noted that, while plaintiff may have "mild spondylosis,"² "no fracture or active abnormality" was seen. On February 4, 1997, Dr. Syed noted that the EMG and nerve conduction studies "do not show any neurogenic component to the arm or leg pain she has. She probably has stretch injury to the cervical roots causing her problems. She does not have peripheral neuropathy." Dr. Syed further commented that, while plaintiff may have borderline carpal tunnel syndrome, "the problems with the hip and back are musculoskeletal in nature. There could be mild lumbar radiculitis from stretch injury." On February 25, 1997, an MRI of plaintiff's cervical spine showed a "very small central disc herniation at the C5-6 level. It makes a very minimal impression upon the anterior aspect of the thecal sac and does not appear to impress upon the exiting nerve root."

On the basis of the record before us, we conclude that the trial court properly determined that no genuine issue of material fact existed with respect to whether plaintiff suffered a serious impairment of a body function. Again, a "serious impairment of a 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). Implicit in this definition is a requirement that the impairment be serious.³ When determining whether an impairment is serious, relevant factors may include the extent of the impairment, the length of time the impairment of body function lasts, the type of treatment required to rectify the impairment, and a comparison of the plaintiff's activities and abilities before the impairment. *DiFranco v Pickard*, 427 Mich 32, 67-68; 398 NW2d 896 (1986).

To demonstrate an "objectively manifested impairment," plaintiffs must introduce evidence establishing that there is a physical basis for their pain and suffering. *Id.* at 74. An "objectively manifested impairment" may be demonstrated by either accepted medical tests and procedures, or by an expert's diagnosis that is based on the plaintiff's complaints, the physician's observations, and test results. *Id.* at 75. In other words, "[t]he 'serious impairment of body function' threshold requires the plaintiff to prove that his noneconomic losses arose out of a medically identifiable injury which seriously impaired a body function." *Id.*

Viewed in a light most favorable to plaintiffs, the documentary evidence submitted by the parties showed that, after the accident, plaintiff experienced pain in her neck, back, hips, and elbow. Her pain apparently was the result of muscle strain, and she was diagnosed with "somatic dysfunction." The x-rays and the diagnostic tests performed on plaintiff were normal, except for a "very small central disc herniation." The physical therapist reported that plaintiff had a normal range of motion "in all trunk planes." Plaintiff's injuries were consistently described as "mild" and "moderate." Plaintiff was treated with muscle relaxers and physical therapy, and was advised to continue an exercise program. Plaintiff's physicians testified that plaintiff could engage in whatever activities she could tolerate and plaintiff was not restricted in her work or leisure activities other than by her own complaints of pain. See *Bennett v Oakley*, 153 Mich App 622, 631; 396 NW2d 451 (1986) ("Self-imposed limitations do not meet the threshold requirements for serious impairment.") Plaintiff testified that she could not sit or walk without pain and that she was forced to hire someone to help at her day care business because her pain limited

her ability to care for the children. However, she also testified that, while it was more difficult for her to take care of her children and perform household chores, she was able to do those things. In fact, plaintiff testified at her deposition that she did not follow an aerobic exercise program because she “[ran] after kids all day long.” Furthermore, plaintiff’s work as the supervisor of a home for the mentally ill was not affected by her injuries.

On the basis of the record before us, we conclude that the trial court correctly determined that no genuine issue of material fact existed with respect to whether plaintiff suffered an impairment of a body function that was serious and objectively manifested. We therefore affirm the trial court’s grant of summary disposition in favor of defendant.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Peter D. O’Connell

/s/ Kurtis T. Wilder

¹ When asked to define “somatic dysfunction,” plaintiff’s physician, Dr. Scott Randall testified that,

“[a]s far as [plaintiff’s] complaint, it was discomfort, both at rest and associated with activities, twisting, bending, lifting, that type of thing. Regarding her physical exam findings, that just would mean - somatic dysfunction is a rather broad term. It could mean her not being in alignment regarding her spinal column. It could also be supporting muscles of the spine as well as some of the other associated muscles of her back and of her extremities.

² Spondylosis is defined as “immobility and fusion of vertebral joints.” Random House Webster’s College Dictionary (2d ed, 1997).

³ To find otherwise would be contrary to the rules of statutory construction providing that courts should give effect to every word of a statute and should avoid any construction that renders any part of a statute surplusage or nugatory. *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999).