

STATE OF MICHIGAN
COURT OF APPEALS

DENISE MARIE KELLER,

Plaintiff-Appellant,

v

LORETTA MARIE LEJA,

Defendant-Appellee.

UNPUBLISHED

August 21, 2001

No. 222589

Emmet Circuit Court

LC No. 98-005131-NI

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 10, 1997 plaintiff's vehicle was struck by a vehicle driven by defendant. Plaintiff was taken to the hospital, where she complained of back pain between her shoulders. X-rays revealed no abnormality. Plaintiff was diagnosed with acute thoracic strain. Throughout 1997 and 1998 plaintiff consulted various physicians, who reported complaints of tenderness and muscle spasms. No objective evidence of abnormality was detected. Four months after the accident plaintiff was found to have full range of motion in her cervical spine.

Plaintiff filed suit, alleging that the injuries she sustained in the accident constituted a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the evidence did not demonstrate that plaintiff sustained an objectively manifested impairment of an important body function that adversely affected her ability to lead her normal life. The trial court agreed with defendant, and granted summary disposition.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A serious impairment of body function is "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life."

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

MCL 500.3135(7). Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a). In determining whether the impairment of the important body function is serious, the court should consider factors such as the extent of the injury, the treatment required, the duration of the disability, and the extent of residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. The undisputed evidence showed that as a result of the accident plaintiff suffered a soft tissue injury to the area of her cervical spine. Plaintiff was not hospitalized, and did not require surgery. Tests, including x-rays and an MRI, showed no evidence of abnormality. Plaintiff correctly notes that the physicians with whom she consulted noted the presence of tenderness; however, tenderness is a subjective complaint. *Flemings v Jenkins*, 138 Mich App 788, 790; 360 NW2d 298 (1984). Four months following the accident, an orthopedic surgeon found that plaintiff had full range of motion in her cervical spine, and noted that she did not complain of significant pain. Plaintiff acknowledged that she was able to carry on with her daily activities, including caring for two young children. The undisputed evidence showed that plaintiff required no treatment beyond physical therapy and pain medication, and that her prognosis for a full recovery was favorable. No evidence demonstrated that plaintiff suffered an objectively manifested injury as a result of the accident. Her general ability to lead her normal life was not significantly altered by the injury. *Miller v Purcell*, ___ Mich App ___; ___ NW2d ___ (Docket No. 221473, pub'd June 1, 2001 at 9:05 a.m.). Plaintiff failed to meet the threshold requirements of MCL 500.3135. The trial court correctly granted summary disposition in favor of defendant.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel