

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALENA BLOCK,

Plaintiff-Appellant,

v

STEPHANIE PEARL PAWLUK,

Defendant-Appellee.

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UNPUBLISHED

January 4, 2002

No. 225124

Oakland Circuit Court

LC No. 99-011946-NO

Before: Meter, P.J., and Jansen and R. D. Gotham\*, JJ.

PER CURIAM.

Plaintiff appeals as of right 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 17, 1996 plaintiff, who was then fifteen years old, was crossing the street when she was struck by a vehicle driven by defendant. Physicians at the emergency room found no objective evidence of injury aside from a cut lip. Plaintiff saw her family physician on January 23, 1996. He performed a neurological examination, which was normal. Over the ensuing months plaintiff's mother realized that plaintiff was distracted, was having difficulty with her memory, was tired, and was having emotional problems. On May 23, 1997 plaintiff consulted Dr. Hidalgo, who is board certified in neurology. Neurological and mental status examinations were normal. Dr. Hidalgo found evidence of depression, but did not diagnose cognitive impairment. A test conducted on June 5, 1997, revealed an inner-ear concussion. Dr. Hidalgo opined that because plaintiff had a concussion of the inner ear, an area close to the brain, she likely had a mild closed head injury as well. Michael Vredevoogd, Ph.D., diagnosed depression. Plaintiff's depression was successfully treated with a course of anti-depressants and counseling. She participated in various activities, and held summer jobs. Plaintiff graduated from high school, entered college, and took a full-time job.

In January 1999 plaintiff filed suit alleging that she was injured as a result of defendant's negligence, and that her injuries 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 suffered a serious impairment of an important body function that significantly affected her ability to lead her normal life. Defendant also argued that because the

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

evidence showed that Dr. Hidalgo did not regularly diagnose or treat closed head injuries, his testimony could not create an issue of fact as to whether plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a)(iii). The trial court granted defendant's motion. The court found that plaintiff did not suffer a serious impairment of body function as defined by statute and case law. Plaintiff did not seek neurological treatment for more than one year after the accident occurred. She did not need significant treatment, and continued to participate in her usual activities. The court concluded that even if it were to find that a question of fact existed concerning the nature and extent of plaintiff's injuries, such a dispute would not be material to the determination whether plaintiff suffered a serious impairment of an important body function. Finally, the court determined that a question of fact did not exist with respect to plaintiff's closed head injury because the diagnosis and treatment of such injuries constituted less than five percent of Dr. Hidalgo's practice.

We review de novo a trial court's decision on a motion for summary disposition. *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." 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).<sup>1</sup> 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 evidence showed that plaintiff had an objectively manifested injury, i.e., a mild closed head injury resulting in some cognitive difficulties, and some depression. After a short recovery period, plaintiff resumed her normal school and social activities. She experienced some difficulty with her studies, but received tutoring and graduated from high school on schedule. She began college and took a full-time job. Plaintiff's formal treatment consisted of a course of anti-depressant drugs, counseling, and speech therapy. This treatment lasted several months, and was successful. The trial court correctly found that the evidence did not create a question of fact as to whether plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a); *Kern, supra*. The evidence showed that plaintiff's general ability to lead her normal life was not significantly altered by the injury. *Miller v Purcell*, 246 Mich App 244, 249-250; 631 NW2d 760 (2001). Finally, the trial court did not clearly err by finding that Dr. Hidalgo's testimony did not meet the threshold requirements of MCL 500.3135(2)(a)(iii). The trial court correctly granted summary disposition in favor of defendant.

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<sup>1</sup> The amended version of MCL 500.3135 became effective March 28, 1996, but applies to this case because the instant complaint was filed more than 120 days after the effective date of the amended statute. MCL 500.3135(2).

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham