

STATE OF MICHIGAN
COURT OF APPEALS

JULIET WALLER,

Plaintiff-Appellant,

v

CONTINENTAL INSURANCE COMPANY,

Defendant-Appellee,

and

COLLEEN MADIGAN,

Defendant.

UNPUBLISHED

November 22, 2002

No. 234323

Wayne Circuit Court

LC No. 00-029568-CZ

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

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

Plaintiff's vehicle was struck by a van driven by defendant Colleen Madigan, an uninsured driver. Plaintiff, who was sixty-two years old at the time, refused medical treatment. The next day she presented to the emergency room complaining that a sensation resembling electricity had traveled up the back of her head. An examination detected no abnormalities except for pre-existing carpal tunnel syndrome. Plaintiff was informed that at worst, she likely experienced a muscle spasm.

Plaintiff consulted Dr. Lewerenz, her family physician, on various occasions and complained of pain in her low back, left hip, and knees. Dr. Lewerenz diagnosed cervical, thoracic, and lumbar fibromyositis (inflammation) and right knee arthralgia (arthritis), and advised plaintiff to avoid activities that would be detrimental to her condition. X-rays and an MRI revealed no abnormalities attributable to the accident.

Plaintiff filed suit alleging that the injuries she sustained as a result of the accident resulted in a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff had no objectively manifested injuries

attributable to the accident, and that her complaints of pain did not rise to the threshold level of a serious impairment of body function. Defendant also contended that plaintiff's condition did not affect her ability to lead her normal life. The trial court granted defendant's motion and dismissed the case with prejudice.¹ The court noted the evidence showed the objective tests were within normal limits, and concluded that subjective complaints of pain did not constitute a serious impairment of body function.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

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). For an impairment to be objectively manifested, there must be a medically identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, ___ Mich App ___; ___ NW2d ___ (Docket No. 227759, pub'd August 27, 2002 at 9:05 a.m.), slip op at 5-6. 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). In assessing the extent of the injury, the court may compare the plaintiff's lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Plaintiff argues the trial court erred by granting defendant's motion for summary disposition. We agree. Plaintiff's assertion the evidence supported a finding that she had an objectively manifested injury, i.e., muscle spasms, is accurate. Although the emergency room physicians, who treated plaintiff the day after the accident, did not *specifically* diagnose a muscle spasm, they concluded that under the worst-case scenario plaintiff had experienced a muscle spasm. Moreover, Dr. Lewerenz, plaintiff's family physician who also examined plaintiff, indicated in his report, a report incidentally on which both sides rely, that "Examination revealed positive paravertebral muscle mass spasm, muscle stiffness and sharply restricted range of motion in all planes of the cervical, thoracic and lumbar spine."

Because the record evidence submitted to the trial court contains a diagnosis of muscle spasm based on physical examination, and muscle spasms are "an objectively manifested impairment," *Franz v Woods*, 145 Mich App 169, 176 (1985), *Harris v Lemicex*, 152 Mich App 149, 154 (1986), the circuit court erred in ruling that plaintiff failed to present an issue of fact regarding whether plaintiff had an objectively manifested injury.

¹ Plaintiff's case against Madigan was deemed dismissed after the expiration of the summons. MCR 2.102(E)(1).

Our decision is limited to the only issue before us; to-wit: whether plaintiff has established a genuine issue of fact as to the existence of a medically identifiable injury or condition.

Reversed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter