

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

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DONNA WERTHEIMER,

Plaintiff-Appellant,

v

DAVID MICHAEL WALKER, ACCESS CABS,  
INC., and PONTIAC CABS, INC.,

Defendants-Appellees.

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UNPUBLISHED

April 15, 2003

No. 238686

Oakland Circuit Court

LC No. 2001-028656-NI

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition in this automobile negligence action. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). 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 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, 455; 597 NW2d 28 (1999).

A person is subject to tort liability for automobile negligence if the injured person "suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(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). Because the statutory definition of serious impairment of body function is the same as that adopted in *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982), it is appropriate to refer to *Cassidy* and cases decided thereunder in deciding this case. *Kern v Blethen-Coluni*, 240 Mich App 333, 342; 612 NW2d 838 (2000). 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 the determination whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a).

To establish a serious impairment of body function, the plaintiff must first show that she has an objectively manifested injury. An objectively manifested injury is a medically identifiable injury or condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). The evidence showed that plaintiff had muscle spasms, which are objective manifestations of injury. *Bennett v Oakley*, 153 Mich App 622, 630; 396 NW2d 451 (1986); *Harris v Lemicex*, 152 Mich App 149, 153-154; 393 NW2d 559 (1986). In addition, x-rays showed disc space narrowing at C4-C5 and C5-C6 and an MRI showed disc bulges at C4-C5 and C5-C6. These are also objective manifestations of injury. *Kreiner v Fischer*, 251 Mich App 513, 518 n 4; 651 NW2d 433 (2002); *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984). Although plaintiff's x-rays showed the same condition before the accident, her doctors stated that the conditions were related to the accident, thus creating a question of fact. The injuries affected plaintiff's ability to move her neck and shoulder, which are important body functions.

The injury was not extensive and required no treatment other than medication and physical therapy. According to one doctor, plaintiff's physical condition was completely normal by February 2001, so the only residual impairment is unexplained pain. However, plaintiff was disabled from working for ten months and had difficulty doing housework and yard work. Such evidence was sufficient to create a question of fact whether plaintiff's injuries were serious. *Kern, supra* at 341; *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood