

STATE OF MICHIGAN
COURT OF APPEALS

ANITA ALFARO,

Plaintiff-Appellant,

V

TIMOTHY JAMES BECK and CARRIE LYNN
BECK,

Defendants-Appellees.

UNPUBLISHED
September 9, 2003

No. 239892
Oakland Circuit Court
LC No. 01-029151-NI

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

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

The vehicle driven by plaintiff was struck from the rear by a vehicle driven by Timothy Beck. Plaintiff sought treatment at the emergency room. X-rays of her cervical spine revealed degenerative changes but no fractures or dislocations. Several months later plaintiff presented to the emergency room with complaints of neck pain. An examination revealed painful range of motion but no motor, sensory, or reflex deficits. Plaintiff was diagnosed with acute radicular pain involvement in the cervical spine. X-rays revealed degenerative changes in plaintiff's cervical spine with some spurring. Other examinations revealed muscle spasms and restricted range of motion in plaintiff's cervical spine. Plaintiff's family physician ordered a two-month regimen of physical therapy. The physical therapists noted muscle spasms, decreased muscle strength, and decreased functional usage.

Plaintiff filed suit alleging that the injuries she sustained in the accident resulted in a serious impairment of body function. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that any injuries plaintiff sustained in the accident did not constitute a serious impairment of body function.

In response, plaintiff argued that a factual dispute existed concerning the nature and extent of her injuries, and that the dispute was material to the determination whether she had suffered a serious impairment of body function. She asserted that she continued to experience muscle spasms and restricted range of motion in the cervical area. Plaintiff had difficulty

standing or walking for prolonged periods, and she could not lift objects of moderate weight, drive for extended periods, or engage in gardening or sewing as she did prior to the accident.

The trial court granted defendants' motion. The court found that plaintiff had not demonstrated either that she received an objectively manifested injury as a result of the accident, or that her ability to lead her normal life had changed.

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*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). 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 that the trial court erred by granting defendants' motion for summary disposition. We agree and reverse the trial court's decision. Plaintiff had back problems and exhibited degenerative changes in her spine prior to the accident. However, following the accident plaintiff exhibited muscle spasms in the cervical area of her spine. Muscle spasms are an objectively manifested injury. *Bennett v Oakley*, 153 Mich App 622, 630; 396 NW2d 451 (1986). Furthermore, a physical medicine rehabilitation specialist opined that plaintiff's cervical osteoarthritis, an objectively manifested condition, was at a minimum aggravated by the accident. The trial court erred in finding that the evidence did not create a question of fact whether plaintiff sustained an objectively manifested injury as a result of the accident.

Lingering pain, in and of itself, does not create an issue of fact as to whether an injury has resulted in a serious impairment of body function. See *Kallio v Fisher*, 180 Mich App 516, 518-519; 448 NW2d 46 (1989). However, plaintiff testified in her deposition that as a result of her injuries she could no longer lift objects of even moderate weight, perform household chores for any length of time, stand or sit for prolonged periods, or garden. Plaintiff stated that she could no longer engage in various charitable activities or participate in some social activities at her church because she could not drive for an extended period and could not lift and move objects such as chairs. Dr. Markowitz told her to avoid activities that required bending or lifting. A question of fact existed as to whether plaintiff's injury affected her ability to lead her normal life. The trial court erred by determining that the issue of whether plaintiff suffered a serious

impairment of body function was a question of law under the circumstances. MCL 500.3135(2)(a); *May, supra*.

Reversed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad