

STATE OF MICHIGAN
COURT OF APPEALS

STARR HARRISON,

Plaintiff-Appellant,

v

SEAN D. BARNOWSKY and LESLEE M.
BARNOWSKY,

Defendants-Appellees.

UNPUBLISHED

November 25, 2003

No. 242018

Oakland Circuit Court

LC No. 01-032475-NI

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment granting defendants' motion for summary disposition, pursuant to MCR 2.116(C)(10), in this motor-vehicle accident case involving the question whether plaintiff suffered a serious impairment of body function. We affirm.

On appeal, plaintiff contends that the trial court erred in granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) because it failed to make the findings required by MCL 500.3135(2)(a)(i) and (ii), and because it found, as a matter of law, that plaintiff had not suffered an objectively manifested impairment and that her injury did not affect her general ability to lead her normal life.

A trial court's decision regarding a motion for summary disposition is reviewed de novo. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). Summary disposition can be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A motion for summary disposition based upon the lack of a material factual dispute tests the factual support for a claim. *De Sanchez v Dep't of Mental Health*, 467 Mich 231, 235; 651 NW2d 59 (2002). When testing this support, the pleadings, affidavits, depositions, admissions, and other admissible evidence must be viewed in the light most favorable to the nonmoving party. *Quality Products, supra* at 369.

Plaintiff first contends that summary disposition was improperly granted as the trial court did not make the findings required by MCL 500.3135(2)(a). We disagree.

The question whether a plaintiff has suffered a serious impairment of body function is a question of law for the court when (1) there is no factual dispute concerning the nature and

extent of the person's injuries; or when (2) there is a factual dispute, but it is not outcome determinative on the issue; material or outcome-determinative factual disputes are matters for the jury. MCL 500.3135(2)(a); *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 682-683; ___ NW2d ___ (2003). Regarding the nature of the injuries, the trial court needs to determine if there is a factual dispute over the existence of an objectively manifested impairment, and if so, whether there is a factual dispute regarding the impairment of an important body function. *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001). Regarding the extent of the injuries, the court needs to determine if there is a factual dispute regarding the impairment's effect on the plaintiff's general ability to lead her normal life. *Id.*

The trial court made these findings with respect to both the nature and extent of plaintiff's injuries. The trial court found that plaintiff's impairment was not objectively manifested because she suffered only from subjective injuries—limited range of cervical and thoracic motion with spasm and tenderness in plaintiff's neck, shoulder and back—that were not verified by the objective tests—magnetic resonance imaging (MRI) or CT scan. The trial court also found that plaintiff's impairment did not affect her general ability to lead her normal life because it was a soft tissue injury that would heal quickly. Therefore, there is no merit to plaintiff's claim that the trial court failed to make the necessary findings pursuant to MCL 500.3135.

Plaintiff next contends that the trial court erred in determining that she had not suffered an objectively manifested impairment of an important body function which affected her general ability to lead her normal life. The trial court found that, as a matter of law, plaintiff's neck, shoulder and back are important body functions, so in this appeal we need only consider whether plaintiff suffered an impairment that was objectively manifested and whether it affected plaintiff's general ability to lead her normal life.

The trial court found that plaintiff had not suffered an objectively manifested impairment as a matter of law. In order to be objectively manifested, there must be a medically identifiable injury that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652; 654 NW2d 604 (2002). Subjective complaints of injury can support a claim of serious impairment of body function, but only if there is a physical basis and an expert diagnosis to support the subjective claim. *Id.* at 650; *DiFranco v Pickard*, 427 Mich 32, 74-75; 398 NW2d 896 (1986). Palpable muscle spasms are objective as a doctor must palpate trigger areas looking for asymmetrical findings which indicate injury. *Franz v Woods*, 145 Mich App 169, 176; 377 NW2d 373 (1985). Plaintiff was diagnosed with upper thoracic myalgia after Dr. Belgiano noted muscle spasms in her upper back five days after the accident. In April of 1999, Dr. Juopperi noted trigger points in plaintiff's right trapezius, right sternocleidomastoid muscle, and right paracervical musculature. Plaintiff's physical therapist noted spasm in the upper trapezius in May of 1999. Based on these objective tests, the trial court should have found, minimally, that there was a factual dispute regarding whether plaintiff suffered an objectively manifested impairment.

The trial court also found that there was no significant effect on plaintiff's general ability to lead her normal life. We agree. There does not need to be a serious effect on a person's general ability to lead his or her normal life, but not just any effect is sufficient to show a serious impairment of body function. *Kreiner, supra* at 686-687. The term "general" can require a focus on multiple aspects of a person's life to determine the effect of an impairment on the person's lifestyle. *Id.* at 689. It is proper to compare a person's lifestyle before and after an

accident to determine if a factual dispute exists regarding a person's general ability to lead his or her normal life. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

The trial court correctly took plaintiff's deposition to be true on its face when making its determination. Plaintiff missed only a week of school and work. She was able to ski shortly after the accident, even though she could not ski competitively. There were no restrictions placed on plaintiff's activities at home. Plaintiff's general ability to lead her normal life was not affected. Therefore, plaintiff did not suffer a serious impairment of a body function as a matter of law, and it was proper for the trial court to grant summary disposition in favor of defendants.

Affirmed.

/s/ Karen M. Fort Hood

/s/ William B. Murphy

/s/ Janet T. Neff