

STATE OF MICHIGAN
COURT OF APPEALS

LORRI HADDIX,

Plaintiff-Appellant,

v

ELIZABETH MARIE MAJCHRZYCKI,

Defendant-Appellee.

UNPUBLISHED

April 27, 2004

No. 244983

Alpena Circuit Court

LC No. 01-003169-NI

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s order granting defendant’s motion for summary disposition. We reverse.

On October 30, 1998, a car driven by plaintiff collided with a car driven by defendant. Shortly thereafter, plaintiff presented to her family physician with complaints of pain in her left knee and leg. In July 2000, an orthopedic surgeon diagnosed plaintiff with patellar chondromalacia, a degenerative softening of cartilage under the kneecap. In September 2000, plaintiff underwent arthroscopic surgery for the removal of loose cartilage and the excision of a plica, a fold of skin, from under the kneecap. Twenty days after surgery, plaintiff was released to return to work with a restriction of no kneeling or squatting for six weeks. In November 2000, plaintiff was discharged from physical therapy with goals basically achieved.

Plaintiff filed suit alleging that the injuries she sustained in the accident resulted in a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the evidence did not create a genuine issue of fact as to whether plaintiff sustained a serious impairment of body function as a result of the accident. The trial court granted defendant’s motion for summary disposition, concluding that, although plaintiff’s knee injury was objectively manifested and impaired her ability to walk (an important body function), it did not affect her general ability to lead her normal life.

We review a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present

documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in opposition to a motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden, supra.*

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). See also *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 686-687; 671 NW2d 95 (2003). 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). Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

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, a 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 alleges that the trial court erred by granting defendant’s motion for summary disposition. We agree. Review of the record reveals that defendant did not move and support the motion for summary disposition in accordance with MCR 2.116. *Quinto, supra.* Defendant did not attach deposition testimony or any other admissible documentary evidence to the motion. Rather, defendant purportedly summarized plaintiff’s deposition testimony in the narrative portion of its brief and attached a summary of plaintiff’s medical history. The foundation for this document is not contained within the lower court record. Despite the deficiencies with the filing of the motion for summary disposition, plaintiff submitted an affidavit in opposition to the dispositive motion. Specifically, plaintiff attested that her lifestyle before and after the accident was severely impacted by the accident.

Plaintiff had an objectively manifested injury to her knee consisting of patellar chondromalacia and a plica discovered during arthroscopic surgery. Walking is an important body function. *Kern, supra.* Plaintiff attested that the injury incurred from the accident severely impacted her lifestyle, and defendant did not present documentation to the contrary. Under the circumstances, the trial court erred in concluding as a matter of law that summary disposition was proper. *Maiden, supra; Quinto, supra.*

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Peter D. O’Connell
/s/ Karen M. Fort Hood