

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA COOK,

Plaintiff-Appellant,

v

MARTINA RENE DEPILLARS,

Defendant-Appellee.

UNPUBLISHED

May 11, 2004

No. 247903

Genesee Circuit Court

LC No. 01-070936-NI

Before: Saad, P.J., and Sawyer 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 affirm.

On August 19, 2000, plaintiff was traveling in the passenger seat of a vehicle driven by a coworker. According to the police report, the coworker fell asleep at the wheel and hit the median, causing the vehicle to rollover. Plaintiff was also asleep at the time of the accident, but remained in the car because she was wearing a seat belt. Plaintiff injured her right arm in the crash. She was treated at the hospital that evening and discharged with pain medication. For two weeks after the accident, plaintiff returned to the hospital burn unit to have the wound cleaned. After that two-week period, she cleaned the wound at home for a week to ten days. On September 13, 2000, plaintiff was given permission by her doctor to return to work without any restrictions.

Plaintiff filed this litigation against defendant, the owner of the vehicle involved in the accident, alleging serious impairment of a body function. Plaintiff was sent for an independent medical examination before a plastic surgeon. The surgeon identified three scars on plaintiff's right forearm: (1) a scar distal to the elbow joint, two centimeters in length and ½ centimeter width; (2) a scar from the ulnar bone in the distal direction, two centimeters in length; and (3) a curved scar measuring 3 ½ centimeters in length and ½ centimeter in width. In her deposition testimony and to the plastic surgeon, plaintiff reported that there was "sensitivity" when she placed her arm in a position to allow pressure on the scars. The scars did not have any impact on plaintiff's ability to work. Rather, plaintiff had been off of work and collecting disability benefits because of her treatment for cancer. The plastic surgeon testified that the scars were permanent, but indicated that surgery would lessen the appearance and sensitivity to pressure. Plaintiff testified that she was able to engage in her hobbies, shopping and movies, both before and after the accident. Plaintiff was precluded from performing some household chores

immediately after the accident, but was able to perform all household chores within a short period of time after the accident. Based on the deposition testimony and medical documentation, defendant moved for summary disposition, alleging that plaintiff did not suffer a permanent serious disfigurement or a serious impairment of a body function. The trial court granted the motion for summary disposition.

Plaintiff first alleges that the trial court erred in granting defendant's motion for summary disposition. We disagree. 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. MCL 500.3135(2)(a). A question of law for the court is also presented 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. *Id.* Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

To determine 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, the extent of residual impairment, and the prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). When evaluating 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).

In the present case, the trial court concluded that an objective manifestation of an impairment of an important body function had been established where the car accident caused injury to plaintiff's arm. The trial court also concluded that the use of one's arm was an important body function. However, the trial court concluded that the injury did not impact plaintiff's general ability to lead her normal life. Indeed, review of plaintiff's deposition testimony revealed that she was able to engage in most of the same activities both before and after the accident. *May, supra.* Moreover, within a short period of time, plaintiff was able to regain full use of her arm to perform household chores and was cleared to return to work within three weeks of the accident. Plaintiff suffered cuts to her arm that caused scarring, but did not

suffer any broken bones or require surgery. Under the circumstances, the trial court properly granted the defense motion for summary disposition.¹ MCL 500.3135(2)(a); *Maiden, supra*.

Plaintiff next alleges that reversal is required because the trial court relied on case law without precedential value. This issue is without merit. Review of the trial judge's ruling reveals that he noted that there was a disparity between an unpublished and published decision before relying on published case law to dismiss the litigation. Plaintiff's contention is simply not supported by the record.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Karen M. Fort Hood

¹ We note that the complaint alleges a claim based on serious impairment of a body function. There is no indication that plaintiff amended her complaint to add an additional theory. Despite the allegations contained in the complaint, the defense moved for summary disposition of a claim based on permanent serious disfigurement, plaintiff opposed the motion, and the trial court ruled that dismissal of this claim was proper also. Assuming that plaintiff would have amended her complaint to allege permanent serious disfigurement, summary disposition of the claim was proper. See *Kosack v Moore*, 144 Mich App 485, 491; 375 NW2d 742 (1985).