

STATE OF MICHIGAN
COURT OF APPEALS

NICOLE LYNN DEATON,

Plaintiff-Appellant,

v

KARL EDWARD KLAWON,

Defendant-Appellee.

UNPUBLISHED

October 7, 2004

No. 248136

Lapeer Circuit Court

LC No. 02-031063-NI

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that granted defendant's motion for summary disposition, and we affirm.¹

Plaintiff's vehicle collided with a vehicle driven by defendant. Objective tests performed shortly after the accident revealed a herniated disc at C 5-6 and ulnar nerve entrapment across plaintiff's left elbow. Plaintiff consulted various physicians, but returned to work three and one-half weeks after the accident. Plaintiff filed suit alleging that the injuries she sustained in the accident constituted a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), and argued that plaintiff suffered no objectively manifested injuries as a result of the accident, and that even assuming the contrary, her injuries did not affect her general ability to lead her normal life. The trial court granted the motion, and ruled that no evidence showed that plaintiff's disc herniation and ulnar nerve entrapment were proximately caused by the accident, or that her injuries affected her general ability to lead her normal life.

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

¹ This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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.

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course of the person's life. The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. The court must examine the plaintiff's life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff's life. In order to determine whether the plaintiff's general ability to lead his or her normal life has been affected by the objective impairment, the court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Kreiner v Fischer*, 471 Mich 109, 129-134; 683 NW2d 611 (2004).

Shortly after the accident plaintiff exhibited objectively manifested injuries, including a herniated disc at C 5-6 and ulnar nerve entrapment in her left elbow. No medical records documented the existence of these injuries prior to the accident. The function of the neck and arms are important body functions. However, no evidence showed that plaintiff's injuries affected her general ability to lead her normal life. She returned to work three and one-half weeks after the accident occurred, and was working full-time at the time of her deposition. Plaintiff's lifting restriction, the only restriction imposed by a physician, did not impede her ability to hold a full-time position. Plaintiff refrained from engaging in some recreational activities; however, self-imposed restrictions do not establish that an injury has affected a person's general ability to lead her normal life. *Kreiner, supra* at 133 n 17. No evidence showed that plaintiff's general ability to lead her normal life was adversely affected by any injury caused by the accident. Absent such evidence, plaintiff was unable to make out a prima facie case that she suffered a serious impairment of body function. The trial court did not err in 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), and correctly granted summary disposition.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell