

STATE OF MICHIGAN
COURT OF APPEALS

RONALD M. DAHLVIG and CHERRI
DAHLVIG,

UNPUBLISHED
November 4, 2004

Plaintiffs-Appellants,

v

GORDY'S MOBILE HOME TRANSPORT and
CHARLES WAYNE DAVIS,

No. 248969
Houghton Circuit Court
LC No. 02-011842-NI

Defendants-Appellees.

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

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

Ronald Dahlvig was driving a delivery truck when a mobile home being carried on a transport truck owned and operated by defendants fell and struck his vehicle. Plaintiffs filed suit alleging that the injuries Dahlvig suffered in the accident resulted in a serious impairment of body function. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), finding that as a matter of law, Dahlvig's injuries did not constitute a serious impairment of body function.

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). 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, 133; 683 NW2d 611 (2004).

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition.¹ We affirm. A muscle spasm is an objectively identifiable injury, and the ability to use the back is an important body function. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986). Dahlvig's chiropractor diagnosed him as suffering from muscle spasms following the accident and opined that the spasms were attributable to the accident. Dahlvig's assertion that he experienced constant pain following the accident and that he was unable to engage in recreational activities or do household chores to the extent he had prior to the accident did not create a question of fact as to whether his injuries affected his general ability to lead his normal life. Dahlvig continued to hold steady employment and to engage in various recreational activities. He operated under no physician-imposed restrictions. Pain, in and of itself, cannot be relied upon to establish the existence of a serious impairment of body function, and self-imposed restrictions are insufficient to create the existence of a serious impairment of body function. *Kreiner, supra* at 133 n 17. No evidence created an issue of fact as to whether any injury Dahlvig suffered as a result of the accident affected his general ability to lead his normal life. Absent such evidence, plaintiffs were unable to make out a prima facie case that Dahlvig suffered a serious impairment of body function. The trial court did not err in determining that the issue of whether Dahlvig 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/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski

¹ Plaintiffs are Wisconsin residents and defendants are Minnesota residents. Plaintiffs assert on appeal, as they did below, that Michigan choice of law principles mandate that either Wisconsin law or Minnesota law should be applied to resolve this matter. The trial court did not address this issue. Plaintiffs have failed to argue the merits of or to cite authority in support of their position; therefore, we deem the issue to be abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).