

STATE OF MICHIGAN
COURT OF APPEALS

SOPHIA SOAVE,

Plaintiff-Appellant,

v

ROSEMARY AGNES BLUCHER,

Defendant-Appellee.

UNPUBLISHED

April 7, 2005

No. 250472

Wayne Circuit Court

LC No. 02-220087-NI

Before: Murray, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this no-fault action. We affirm.

This action arose out of an automobile accident that occurred on June 6, 2001. Plaintiff was slowing her car to make a turn when defendant's van struck her passenger side, throwing her against the driver's side door. Plaintiff filed a complaint alleging that, as a result of defendant's negligent driving, she suffered serious impairment of a body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), arguing that plaintiff's injuries did not satisfy the serious impairment of body function standard under Michigan's No-Fault Act, MCL 500.3135. In granting defendant's motion for summary disposition, the trial court did not reach the question whether plaintiff's injury constituted a serious impairment of body function. Instead, the court found plaintiff had not presented enough evidence to create a genuine issue of material fact that the auto accident caused plaintiff's injuries.

We review a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition brought under MCR 2.116(C)(10) is properly granted when the trial court considers admissible evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the non-moving party and determines that no genuine issue of material fact exists. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition. We disagree. First, we note that although the trial court granted defendant's motion for summary disposition on the basis of insufficient evidence to establish causation, plaintiff made no attempt in her brief to discuss the propriety of summary disposition on that basis. When an appellant fails to dispute the basis of the trial court's ruling, this Court need not consider

granting the relief sought. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). In any event, the trial court properly granted summary disposition because plaintiff failed to present sufficient evidence of causation. Additionally, plaintiff's claim fails because she did not establish that she suffered a serious impairment of body function.

To demonstrate a prima facie case of negligence, a plaintiff must show that (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the defendant's breach of duty was the cause in fact and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered damages. *Case v Consumer Power*, 463 Mich 1, 6; 615 NW2d 17 (2000). Cause in fact requires that the harm would not have happened but for the defendant's negligent actions. *Haliw v City of Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001). Legal or proximate cause requires an examination of the foreseeability of consequences and whether the defendant should be held responsible for those consequences. *Id.*

"[C]ausation theories that are mere possibilities or, at most, equally as probable as other theories do not justify denying the defendant's motion for summary disposition." *Skinner v Square D Co*, 445 Mich 153, 172-173; 516 NW2d 475 (1994). Causation is generally a factual issue to be decided by the trier of fact, but if there is no issue of material fact, then the question is one of law for the court. *Holton v A+ Ins Assoc, Inc*, 255 Mich App 318, 326; 661 NW2d 248 (2003). The burden of establishing causation is on the plaintiff, and the mere fact of an accident does not create a presumption of causation. *Skinner, supra* at 164.

In this case, plaintiff, who was eighty-four years old at the time of this accident, did not seek medical treatment until twelve days after the accident, when she visited her family physician and reported weakness and pain on her left side. X-rays revealed degeneration in her spine and hip, but no new injury. She was treated with over-the-counter pain medication. She visited her doctor a week later and reported feeling better, walking well, and did not report leg pain. Three weeks later, when she went to her doctor for a regular checkup for hypertension, there was no indication of a leg problem in the treatment report. The doctor reported that she was in no distress on that date. Four months later, she returned to the doctor and reported weakness in her left leg, which was later diagnosed as ataxia, a loss of balance. Defendant's medical expert examined plaintiff and determined that she had arthritic degeneration of her lumbar spine, which pre-existed the auto accident. He did not relate the ataxia to the auto accident. Plaintiff argues that she suffered a serious impairment of body function as a result of the auto accident, but does not directly address the issue of causation, the basis for summary disposition. She does not point to any evidence presented to the trial court that indicated the auto accident was related to the ataxia. Therefore, the trial court properly granted summary disposition on the basis of plaintiff's failure to create an issue of fact regarding causation.

Plaintiff's claim also fails because her injuries do not meet the threshold for serious impairment of a body function as recently outlined by our Supreme Court in *Kreiner v Fischer*, 471 Mich 109, 131-134; 683 NW2d 611 (2004). First, a court must determine that a material factual dispute does not exist with respect to the nature and extent of the person's injuries. *Id.* at 131-132. If there is a material dispute, the court may not decide whether a plaintiff's injuries are a serious impairment of a body function as a matter of law. *Id.* at 132, citing MCL 500.3135(2)(a)(i) and (ii). Second, the court must determine whether an important body function is impaired and whether that impairment is objectively manifested. *Kreiner, supra* at 132. "Subjective complaints that are not medically documented are insufficient." *Id.* Third, the court

must ascertain whether the impairment impinges on the plaintiff's general ability to lead a normal life. *Id.* This is a multifaceted inquiry comparing the plaintiff's life before and after the accident and evaluating the significance of the impact on the plaintiff's overall lifestyle. *Id.* at 132-133. Factors to consider include "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Id.* at 133.

In this case, there is no material factual dispute regarding the nature and extent of plaintiff's medical complaint. Thus, it is proper to determine as a matter of law whether plaintiff suffered a serious impairment of a body function. Here, medically documented weakness in plaintiff's left leg, which presents as ataxia, constitutes an objective manifestation of an impairment of an important body function. *Kreiner, supra* at 136. The issue is whether the impairment has affected her general ability to live her life.

A negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is generally able to lead a normal life. *Kreiner, supra* at 137. Looking at plaintiff's life as a whole, before and after the auto accident, and the nature and extent of her injuries, her impairment did not affect her overall ability to conduct the course of her normal life. Plaintiff is an eighty-five year old woman who does not work. She testified that she could no longer walk for more than twenty minutes without pain, whereas she could walk for thirty minutes before the accident. Her treatment consisted of over-the-counter pain medication, taken as needed, and self-massage. On November 19, 2002, her physician reported that she had "a little difficulty" with her left leg when walking but stated that she was in "no distress."

While somewhat restricted, plaintiff is able to walk, shop, drive, do craft projects, and teach craft classes. Although she may have been more restricted for a period of months after the accident, she has recovered to the point that, compared to her pre-impairment life, her post-impairment life is not so different that her "general ability" to conduct the course of her normal life has been affected. See *Kreiner, supra* at 137. Plaintiff's left leg weakness and occasional pain are not significant impairments to her general ability to lead her normal life. Therefore, plaintiff did not satisfy the serious impairment of body function threshold for recovery of non-economic damages under Michigan's No-Fault Statute. MCL 500.3135.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Donald S. Owens