

STATE OF MICHIGAN  
COURT OF APPEALS

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LINDA M. SHAW,

Plaintiff-Appellant,

v

GEORGANNE BOYLAN FREYRE, Personal  
Representative of the Estate of JOSEPH  
LAWRENCE FREYRE, Deceased,

Defendant-Appellee.

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UNPUBLISHED

July 26, 2005

No. 260109

Genesee Circuit Court

LC No. 01-071083-NI

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this automobile negligence action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A person is subject to tort liability for automobile negligence if the injured person "suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A serious impairment of body function is defined as "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). Whether a person suffered a serious impairment of body function presents a question of law for the court if there is no factual dispute about the nature and extent of the plaintiff's injuries. MCL 500.3135(2)(a)(i). If a factual dispute is present, but it is not material to the determination whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a)(ii).

We review a trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). If the court determines that it can decide the serious impairment issue as a matter of law, it then must consider whether the plaintiff has suffered an impairment of an important body function and whether that impairment is objectively manifested. *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004). The evidence established that plaintiff had impaired the ability to move her neck and back, which have been held to be important body functions. *Harris v Lemicex*, 152 Mich App 149, 153; 393 NW2d 559 (1986); *Meklir v Bigham*, 147 Mich App 716, 720; 383 NW2d 95 (1985). There was

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

a genuine issue of fact whether that impairment was attributable to herniated discs caused or aggravated by the accident, or to pre-existing degenerative changes unrelated to the accident.

If an important body function has been impaired, and assuming the impairment is objectively manifested, the next question is whether the impairment affected the plaintiff's general ability to lead her normal life. *Kreiner, supra* at 132. In answering this question, the court is to compare the plaintiff's life before and after the accident and consider "the significance of any affected aspects on the course of plaintiff's overall life." *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. "Merely 'any effect' on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his normal life." *Id.* (emphasis in original).

Considering the evidence in a light most favorable to the nonmoving party, plaintiff had medically identifiable injuries which affected her ability to move her back and neck. Assuming these injuries were attributable to the motor vehicle accident, the trial court did not err in granting defendant's motion because the evidence established that any impairment did not affect plaintiff's general ability to lead her normal life. Plaintiff suffered a whiplash-type injury that caused pain and affected her flexibility. She was treated conservatively with physical therapy and medication. She was medically restricted from working for four months, whereupon she was able to return to work until she lost her job. The only lasting effect on plaintiff's overall life was difficulty doing housework and gardening and an inability to bowl and work on cars. These last two restrictions appeared to be self-imposed and thus do not qualify as residual impairment. *Id.* at 133 n 17. Because the overall effect of the injury on plaintiff's general life was minimal, *Kreiner, supra*, defendant was entitled to judgment.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Roman S. Gribbs