

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AGHATA MANSOR,

Plaintiff-Appellant,

V

VERONICA GIRNET and MARIUS GIRNET,

Defendants-Appellees.

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UNPUBLISHED

October 25, 2005

No. 262713

Macomb Circuit Court

LC No. 04-001905-NI

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendants' motion for summary disposition. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff alleges defendants' vehicle struck her while she was walking<sup>1</sup> and she lost consciousness for a short time. She presented to the emergency room with complaints of a headache and pain from a small cut over her right eye. Various diagnostic tests, including x-rays, were negative. In the subsequent months plaintiff consulted her family physician and a neurologist, and complained of headaches, dizziness,<sup>2</sup> blurred vision, and neck and back pain. Her family physician diagnosed plaintiff as suffering from a concussion, and prescribed medication to control her pain and dizziness. The neurologist diagnosed plaintiff as suffering from post concussion syndrome, traumatic cervical/lumbar sprain and paraspinal muscle spasm and tenderness, and prescribed medication. An MRI performed several months after the accident showed mild cervical disc bulging, as well as other changes. Both physicians indicated that plaintiff required assistance with daily living activities. Three independent medical examiners opined that plaintiff did not exhibit pathology related to the accident.

Plaintiff sued defendants alleging that the injuries she sustained in the accident constituted a serious impairment of body function. Defendants moved for summary disposition

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<sup>1</sup> Defendants deny that their vehicle struck plaintiff.

<sup>2</sup> Plaintiff suffered from problems with dizziness and vertigo prior to the accident.

pursuant to MCR 2.116(C)(10), arguing that plaintiff's complaints could not be attributed to the accident, and that any injuries plaintiff suffered in the accident did not affect her general ability to lead her normal life. Defendants asserted that the evidence showed that plaintiff lived a sedentary life prior to the accident, and that her life had not changed to any appreciable degree after the accident. The trial court agreed that plaintiff had not suffered a tort liability threshold injury of death, serious impairment of body function, or permanent serious disfigurement, MCL 500.3135(1), and granted defendants' motion.

We review a trial court's decision on a motion for summary disposition de novo. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004).

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). "In order for an impairment to be objectively manifested, there must be a medically identifiable injury or condition that has a physical basis." *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002), approving SJI2d 36.11. See, also, *Moore v Cregeur*, 266 Mich App 515, 519; 702 NW2d 648 (2005), finding "objective medical evidence" documented the plaintiff's eye injury, and *Williams v Medukas*, 266 Mich App 505, 507; 702 NW2d 667 (2005), where the plaintiff's "injuries were objectively manifested by x-rays."

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.

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. *Kreiner, supra* at 131. The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. *Id.* 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. *Id.* at 132-134.

In this case, we conclude that although there is a dispute concerning the nature and extent of plaintiff's injuries, the dispute is not material because plaintiff has not produced evidence that as result of the accident she sustained an objectively manifested, medically identifiable injury or condition that has a physical basis.

In *Kreiner*, the plaintiff had "pain in his lower back, right hip, and right leg." *Id.* at 124. These symptoms are similar to plaintiff's in the instant case. But the injuries *Kreiner* sustained were "medically documented" by "an electromyography (EMG) that revealed mild nerve irritation to the right fourth lumbar (L4) nerve root in *Kreiner's* back and degenerative disc disease with spondylolisthesis." *Id.* at 136, 124-125. The *Kreiner* Court noted, "EMG testing is

a process by which impairment to nerves in the arms and hands may be verified objectively.” *Id.* at 124, n 10. Although plaintiff attempts to support her claim of a threshold injury with an EMG report dated after the trial court’s ruling, our review is limited to evidence actually submitted to the trial court in opposition to the motion for summary disposition. MCR 7.210(A); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). We will not allow enlargement of the record on appeal. *Kent County Aeronautics Bd v Dep’t of State Police*, 239 Mich App 563, 580; 609 NW2d 593 (2000).

Plaintiff primarily relies upon an MRI performed several months after the accident that showed some cervical disc bulging, as well as other changes, to establish that the accident caused plaintiff to suffer a medically identifiable injury. But immediately after the accident plaintiff had no objectively documented injuries other than scrapes and bruises. Subsequently, based on plaintiff’s subjective reports and range of motion testing, a neurologist diagnosed plaintiff as suffering from post concussion syndrome, traumatic cervical/lumbar sprain and paraspinal muscle spasm and tenderness, and prescribed medication. The MRI report itself indicates that the disc displacement it shows *did not* produce “significant stenosis” (stenosis is a narrowing of a passage way, here presumably, where the spinal cord passes), and that the “the overall-appearance of the cervical cord is normal.” The results of an EEG were also within normal limits.

One of defendants’ experts reported plaintiff “has no objective evidence of cervical or lumbar radiculopathy.” This expert opined that the MRI findings “are not related to the motor vehicle accident” but show “degenerative changes consistent with [plaintiff’s] age and body habitus.” Another of defendants’ experts reported finding “[n]o objective neurological abnormality on exam” of plaintiff, and review of her medical records. A third defense expert generally agreed with the two others. This expert opined that plaintiff had “degenerative joint disease based on her age” but no evidence of “neurologic compromise, spinal cord injury, spinal nerve compression, etc.” This expert noted, however, on the basis of the MRI results there is “no way of knowing whether her disc protrusions were degenerative or specifically related to the accident.”

Plaintiff’s expert, Dr A. Rayes, apparently a neurologist, only diagnosed “traumatic cervical/lumbar sprain,” and does not specifically relate the conditions shown in the MRI as being caused by the accident. A sprain is a stretching or tearing of a ligament, which the MRI does not show. In short, the MRI does not objectively verify a medically identifiable injury causally related to the automobile accident.

A second possible basis to find an objectively manifested, medically identifiable injury is Dr Rayes’ diagnosis of “muscle spasm.” Dr. Rayes wrote in a June 19, 2004 progress note regarding plaintiff: “Range of motion of the cervical and lumbar spine are limited and painful and associated paraspinal muscle spasm and tenderness.” A muscle spasm may be objective evidence of an identifiable injury, and the ability to use the back is an important body function. *Chumley v Chrysler Corp*, 156 Mich App 474, 481; 401 NW2d 879 (1986). The *Chumley* Court found that the plaintiff’s back impairment was “objectively manifested by medical examinations revealing a *herniated disc*, *loss of the natural curvature of plaintiff’s cervical spine* and muscle spasms. *The herniated disc was verified by a CAT scan*. We find that this meets the requirement of objective medical measurement of an injury . . . .” *Id.* (emphasis added). Thus, muscle spasm was only one of three physical problems that the plaintiff was suffering, and a CAT scan, an

objective medical test, verified the herniated disc. Presumably, the loss of spine curvature was also objectively verified. We conclude it stretches *Chumley* beyond our Supreme Court's holding in *Kreiner* to find that muscle spasms alone are an objectively identifiable injury that satisfies the no fault tort liability threshold. MCL 500.3135(7); *Jackson, supra* at 652-653.

Further, even assuming plaintiff's muscle spasms are an objectively identifiable injury, causally related to the accident, we still find that they do not satisfy the no fault threshold of a "serious impairment of body function." Dr. Rayes' reported on May 13, 2004 that plaintiff had "near complete, but painful range of motion" and "[t]enderness in the paraspinal muscles." None of defendants' experts who examined plaintiff in 2005 found that she had muscle spasms. If muscle spasms are an objectively identifiable injury, defendants' experts should have found them. Viewing the evidence in the light most favorable to plaintiff, we conclude she experienced some temporary discomfort and limited range of motion as a result of a sprain or sprains causing muscle spasms. That plaintiff experienced temporary, albeit uncomfortable, minor limitation, simply does not satisfy the no fault threshold. See *Kreiner, supra* at 135-136.

We affirm.

/s/ Henry William Saad

/s/ Jane E. Markey