STATE OF MICHIGAN

COURT OF APPEALS

LINDA SAYLES,

Plaintiff-Appellant,

v

MURVETE EJUPI and CLARE DEGRAAF,

Defendants-Appellees.

UNPUBLISHED
February 2, 2006

No. 264390
Kent Circuit Court
LC No. 04-000061-NI

Before: Owens, P.J., Saad and Fort Hood, JJ.

PER CURIAM.

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

On April 6, 2001, a car driven by defendant Ejupi and owned by defendant Degraaf collided with a car driven by plaintiff. Two days later, plaintiff was diagnosed with cervical strain.[1] A lumbar CT, performed on April 16, 2001, showed the presence of bulging discs at L4-5 and L5-S1. Cervical and lumbar MRIs performed in June 2001 revealed disc protrusion at C5-6, disc herniation at L5-S1, and bulging discs at L3-4 and L4-5. Plaintiff treated with various physicians, but could not engage in more than minimal work because of pain.[2]

Plaintiff filed suit, alleging that the injuries she sustained in the accident constituted a serious impairment of body function. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the evidence did not create a question of fact whether the second accident caused injury or aggravated plaintiff's pre-existing condition. At the hearing on defendants' motion, defendants stipulated for purposes of the motion that plaintiff's condition constituted a serious impairment of body function that affected her general ability to lead her normal life. Defendants asserted that the issue to be resolved was whether any evidence showed

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[1] In 1997, plaintiff was involved in an automobile accident in which she sustained injuries to her neck, back, and shoulder. She received work loss benefits for three years as a result of that accident.

[2] Plaintiff owned and operated a cleaning service.

that an objective injury resulting from the 2001 accident proximately caused or aggravated plaintiff's condition. The trial court granted defendants' motion, noting that no objective evidence demonstrated plaintiff's condition was attributable to the 2001 accident.

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). Before a plaintiff may recover for noneconomic loss under the no fault insurance act, the plaintiff must establish that she sustained a serious impairment of body function. *Churchman v Rickerson*, 240 Mich App 223, 226; 611 NW2d 333 (2000), citing MCL 500.3135(1). The mere fact that the plaintiff must establish this threshold injury requirement does not affect the elements of a tort cause of action. Cf. *Stephens v Dixon*, 449 Mich 531, 539-541; 536 NW2d 755 (1995). To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

Because the parties did not dispute that plaintiff's condition constituted a serious impairment of body function that affected her general ability to lead her normal life,[3] the only issue was whether defendants' conduct proximately caused her injuries. *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977). To establish causation, a plaintiff must prove that it is more likely than not that but for the defendant's breach of duty, the injury would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994).

> "[I]f there is evidence which points to any 1 theory of causation, indicating a logical sequence of cause and effect, then there is a juridical basis for such a determination, notwithstanding the existence of other plausible theories with or without support in the evidence." [*Skinner, supra* at 164, quoting *Kaminski v Grand Trunk W R Co*, 347 Mich 417, 422; 79 NW2d 899 (1956).][4]

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[3] When there is no dispute with respect to the nature and extent of a plaintiff's injuries, whether the injuries constitute a serious impairment of body function is an issue of law for the court to decide. MCL 500.3135(2)(a)(*i*). Parties' stipulations of law are not binding on the court. *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000). Nevertheless, defendants conceded that plaintiff suffered a serious impairment of body function solely for the purpose of their summary disposition motion. Moreover, the court appeared to accept the stipulation when it noted that the injury was objective because it could be seen on the MRI, it was an important body function because it involved the spine, and it was a serious impairment because it affected plaintiff's ability to lead a normal life by continuing employment. Regardless, this issue is not before us.

[4] Defendants argue that to meet this standard, plaintiff was required to demonstrate (a) her condition before the second accident, (b) her condition after the second accident, (3) objective medical evidence showing a change in the two conditions, and (4) objective medical evidence
(continued…)

Here, plaintiff testified that although she had some discomfort in her back from the 1997 accident, she had begun working full-time about six months before the April 6, 2001 accident. She claimed that the 2001 accident had elevated the pain to "a whole new level;" since the 2001 accident, she could only stay in one position for twenty minutes before she had to move to alleviate the pain. Plaintiff's account was supported by the notes or conclusions of three physicians, Christian VandenBerg, M.D., (Plaintiff returned to work in 1999 with minimal problems and no medication, but could not work after the 2001 accident because of pain); W. Frank Hernandez, M.D., (plaintiff could barely walk in December 2002); and Mark Kemp, D.O., (very possible that pain was exacerbated by the 2001 accident, and degenerative joint disease could have been aggravated by trauma). Moreover, the various images taken of plaintiff's back in 2001 clearly indicated she had suffered injury. Because plaintiff presented evidence that connected defendants' action to her injury, and causation is generally an issue of fact for the jury, we conclude that summary disposition was not proper. See *Halbrook v Honda*, 224 Mich App 437, 446; 569 NW2d 836 (1997). A defendant may not escape liability for negligent conduct merely because others may also have been negligent; instead, the issue of proximate cause is one for the jury to determine. *Allen v Owens-Corning Fiberglass Corp*, 225 Mich App 397, 401-403; 571 NW2d 530 (1997).

Reversed.

/s/ Donald S. Owens
/s/ Henry W. Saad
/s/ Karen M. Fort Hood

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showing that the second accident caused the change in the conditions. Although objective medical evidence is required to demonstrate a serious impairment of a body function, see *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002), we find no authority indicating a plaintiff must prove causation by any higher standard than the "more likely than not" standard iterated in *Skinner*, *supra*. Defendants do not cite any authority to support placing such a high burden of proof on plaintiff with respect to causation. A party may not merely state a position and expect this Court to search for authority to support it. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Therefore, we deem this argument abandoned. *Id.*