

STATE OF MICHIGAN
COURT OF APPEALS

AGE LULGJURAJ,

Plaintiff-Appellant,

v

SAMIRA BASIC and ABID BASIC,

Defendants-Appellees.

UNPUBLISHED

May 9, 2006

No. 267040

Macomb Circuit Court

LC No. 04-005159-NI

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

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

On October 29, 2003, plaintiff's vehicle collided with a vehicle driven by Samira Basic. Plaintiff consulted with various physicians, including an orthopedist, a pain management specialist, a physical medicine and rehabilitation specialist, a neurologist, and a spine specialist, and underwent surgery on her cervical spine in October 2004.

Plaintiff filed separate motions for summary disposition pursuant to MCR 2.116(C)(10), arguing that the injuries she suffered in the accident constituted a serious impairment of body function, and that defendants' negligence proximately caused her injuries. Plaintiff asserted that the evidence showed that she suffered cervical disc herniation as a result of the accident, and noted that she had been unable to work as a machine operator since the accident occurred.

The trial court denied plaintiff's motions and granted summary disposition in favor of defendants. The trial court noted that plaintiff had a lengthy history of back problems prior to and after the accident, and found that no evidence showed that those back problems were proximately caused or aggravated by the 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).

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, 131-134; 683 NW2d 611 (2004).

Plaintiff argues that the trial court erred by denying her motions for summary disposition and granting summary disposition in favor of defendants. We disagree and affirm. Plaintiff experienced back problems and exhibited degenerative changes in her spine prior to the accident. Following the accident, she exhibited herniations in her cervical spine. These herniations were an objectively manifested injury. *Jackson, supra*. The ability to use the neck and back are important body functions. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986). However, no evidence created a question of fact as to whether plaintiff's cervical disc herniations were proximately caused by the accident. No physician with whom plaintiff consulted attributed the herniations to the accident. The physicians noted that plaintiff reported that her neck pain began after the accident, but no physician, after examining plaintiff and reviewing her medical records, opined that the herniations were caused or aggravated by the accident. The trial court did not err in finding that the evidence did not create a question of fact as to whether plaintiff sustained an objectively manifested injury as a result of the accident.

The evidence that plaintiff was unable to work following the accident was uncontradicted. However, no physician disabled plaintiff from working. Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish the existence of a residual impairment. *Kreiner, supra* at 133 n 17; *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005).

The trial court did not err by determining that the issue of whether plaintiff suffered a serious impairment of body function was a question of law under the circumstances, MCL 500.3135(2)(a), and properly granted summary disposition in favor of defendants.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot