

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

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ADRIA L. ROACH,

Plaintiff-Appellant,

v

JOSHUA A. LOWDER and JAMES D.  
EVEREST,

Defendants-Appellees,

and

MILAN G. MAYBEE,

Defendant.

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UNPUBLISHED  
October 23, 2012

No. 306756  
Jackson Circuit Court  
LC No. 09-003824-NI

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff, Adria Roach, appeals the trial court's entry of judgment in favor of defendants, Joshua Lowder and James Everest. For the reasons set forth below, we affirm.

**I. FACTS AND PROCEEDINGS**

On December 22, 2006, plaintiff was involved in an automobile accident with defendant Lowder, who was driving a truck owned by his stepfather, defendant Everest. Lowder struck an automobile driven by Milan Maybee, who was dismissed from this lawsuit by stipulation of the parties. The collision propelled Maybee's automobile forward and caused it to strike the rear of plaintiff's automobile. Plaintiff alleged that the collision caused her to suffer an injury to her cervical zygapophyseal or facet joints, as well as her left shoulder.

At trial, plaintiff presented the testimony of Dr. Brian Chodoroff, who testified that plaintiff sustained a cervical facet joint injury, and that this injury prevented plaintiff from being able to work one of her two bartending jobs. Dr. Chodoroff also testified that plaintiff had "mild disc bulges" in her shoulder and "minimal disc bulges" in her neck. Plaintiff testified that her injuries caused her to suffer from depression and that they prevented her from participating in recreational activities that she enjoyed before the accident. Defendants presented the testimony of Dr. Phillip Friedman, who testified that he was "not sure the facet joints [were] the source of

[plaintiff's] pain," and that he saw no reason from a neurological perspective to restrict plaintiff's activities, at work or otherwise.

At the close of proofs, plaintiff moved for a directed verdict on the ground that there was no factual dispute about whether she suffered lost wages in excess of the amount provided for under the no-fault statute, or that she was entitled to non-economic damages because she suffered a serious impairment of an important body function. The trial court denied the motion and ruled that there was a factual dispute about causation and the nature and extent of plaintiff's injuries.

## II. DIRECTED VERDICT

Plaintiff contends that the trial court erred by denying her motion for directed verdict and by not deciding, as a matter of law, the issue of whether she suffered a serious impairment of a body function. "A trial court's decision on a motion for a directed verdict is reviewed de novo on appeal. We review all the evidence presented up to the time of the motion in the light most favorable to the nonmoving party to determine whether a question of fact existed." *Silberstein v Pro-Golf of America, Inc.*, 278 Mich App 446, 455; 750 NW2d 615 (2008) (internal citation omitted). "If reasonable jurors could honestly have reached different conclusions, this Court may not substitute its judgment for that of the jury." *Id.*, quoting *Wiley v Henry Ford Cottage Hosp.*, 257 Mich App 488, 491; 668 NW2d 402 (2003). Additionally if there is no factual dispute as to the nature and extent of the plaintiff's injuries in a negligence action arising out of an automobile accident, MCL 500.3135(2)(a) directs the trial court to decide as a matter of law whether the plaintiff has suffered a serious impairment of a body function. *McCormick v Carrier*, 487 Mich 180, 192-194; 795 NW2d 517 (2010).

We hold that the trial court correctly ruled that there was a factual dispute concerning the nature and extent of plaintiff's injuries. As discussed, plaintiff testified that she is unable to participate in certain recreational activities and she presented testimony from Dr. Chodoroff that her employment should be restricted. Further, Dr. Chodoroff testified that plaintiff's cervical facet joints were injured. In contrast, defendant produced testimony from Dr. Friedman that, from a neurological perspective, plaintiff needs no restrictions. Dr. Friedman was "not sure the facet joints [were] the source of [plaintiff's] pain." Because the parties presented conflicting testimony about whether plaintiff's injuries require restrictions at work or otherwise, there was a factual dispute concerning the nature and extent of plaintiff's injuries. See *Chouman v Home Owners Ins Co.*, 293 Mich App 434, 444; 810 NW2d 88 (2011) (when there is conflicting testimony as to whether an injury continues to be an impairment, the trial court should deny a motion for a directed verdict). Furthermore, on the basis of the conflicting testimony of Dr. Chodoroff and Dr. Friedman, there was a factual dispute about whether plaintiff suffered a cervical facet joint injury and whether this injury caused her pain. Accordingly, the trial court did not err in denying plaintiff's motion for a directed verdict. *Id.* See also *Silberstein*, 278 Mich App at 455, quoting *Wiley*, 257 Mich App at 491 ("[i]f reasonable jurors could honestly have reached different conclusions, this Court may not substitute its judgment for that of the jury.").

## III. GREAT WEIGHT OF THE EVIDENCE

In the alternative, plaintiff maintains that the jury's verdict was against the great weight of the evidence on the issue of whether she suffered a serious impairment of an important body function. Plaintiff failed to preserve this issue for appellate review because she did not move for a new trial following the jury's verdict. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 464; 633 NW2d 418 (2001). Nevertheless, we hold that plaintiff's argument is without merit. "This Court may overturn a jury verdict that is against the great weight of the evidence. But a jury's verdict should not be set aside if there is competent evidence to support it." *Dawe v Bar-Levav & Assoc (On Remand)*, 289 Mich App 380, 401; 808 NW2d 240 (2010) (footnote omitted). See also MCR 2.611(A)(1)(e) (a new trial may be granted when the jury's verdict is "against the great weight of the evidence or contrary to law."). If there is conflicting evidence, "the question of credibility ordinarily should be left for the fact-finder." *Dawe*, 289 Mich App at 401. Further, pursuant to MCL 500.3135(7), the "three prongs that are necessary to establish a 'serious impairment of body function' [are]: (1) an objectively manifested impairment (2) of an important body function that (3) affects the person's general ability to lead his or her normal life." *McCormick*, 487 Mich at 195.

As discussed, the parties presented conflicting testimony about whether plaintiff needed to restrict her employment and other physical activities. Therefore, there was conflicting evidence about whether her alleged injuries affected her general ability to lead her normal life. There was also conflicting evidence about whether plaintiff sustained an injury to her cervical facet joints. Because the evidence conflicted, this Court will not disturb the jury's resolution of the issue. *Dawe*, 289 Mich App at 401; see also *Taylor v Mobley*, 279 Mich App 309, 314; 760 NW2d 234 (2008).

Affirmed.

/s/ Henry William Saad  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly