

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

RUBY MOORE,

Plaintiff-Appellant,

v

JAMIE PHILLIP CLOUS,

Defendant-Appellee.

UNPUBLISHED
December 21, 2001

No. 226289
Wexford Circuit Court
LC No. 98-014135-NI

Before: Meter, P.J., and Jansen and Gotham*, JJ.

PER CURIAM.

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

On March 7, 1996, the vehicle in which plaintiff was riding was struck by a vehicle driven by defendant. Plaintiff saw her family physician the day after the accident. X-rays revealed no objective evidence of an injury caused by the accident but showed evidence of degenerative disc disease that had been detected as early as 1984. Electrodiagnostic tests conducted on March 11, 1996 revealed that plaintiff's condition had not changed since 1993. Throughout 1996 and 1997, plaintiff consulted her family physician, a neurosurgeon, and a pain management clinic. She complained of pain in her lower back and extremities. Various tests were conducted, and the results showed that plaintiff's condition had not worsened since the accident.

Plaintiff filed suit, alleging that the injuries she sustained in the accident constituted a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the evidence did not demonstrate that plaintiff sustained an objectively manifested impairment of an important body function as a result of the accident. The trial court granted defendant's motion. The trial court found the evidence showed that plaintiff had three objectively manifested conditions, including lumbar radiculopathy, but no objective medical evidence demonstrated that the lumbar radiculopathy resulted from the accident and was proximately caused by the accident.

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

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

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). 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).¹ In determining whether the impairment of the important body function is serious, the court should consider factors such as the extent of the injury, the treatment required, the duration of the disability, and the extent of residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. The presence of an objectively manifested injury is not sufficient, in and of itself, to submit a case to a jury. A claimant must make a *prima facie* showing that as a result of the defendant's negligence, he or she sustained an objectively manifested injury that resulted in the serious impairment of an important body function. MCL 500.3135(7).

The undisputed evidence showed that plaintiff had an extensive history of neck and back problems that preceded the accident by more than ten years. These problems included lumbar radiculopathy, of which plaintiff continued to complain after the accident. No objective medical tests demonstrated that plaintiff's condition worsened after the accident. Rather, these tests showed that plaintiff's condition was virtually unchanged after the accident. The evidence showed that plaintiff's general ability to lead her normal life, i.e., her life as it was before the accident, was not significantly altered by the injury. *Miller v Purcell*, 246 Mich App 244, 249-250; 631 NW2d 760 (2001). Plaintiff failed to meet the threshold requirements of MCL 500.3135. The trial court correctly granted summary disposition in favor of defendant.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham

¹ The amended version of MCL 500.3135 became effective March 28, 1996 but applies to this case because the instant complaint was filed more than 120 days after the effective date of the amended statute. MCL 500.3135(2).