

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

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TAMMY M. BROWN,

Plaintiff-Appellant,

v

JONATHAN VAN NOLF, THOMAS C. BAKER,  
and MICHAEL J. BLACKLEDGE,

Defendants-Appellees.

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UNPUBLISHED  
November 20, 2003

No. 242628  
Wexford Circuit Court  
LC No. 01-016462-NI

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

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

Plaintiff was a rear seat passenger in a vehicle driven by defendant Brown and owned by defendant Blackledge. The vehicle collided with a truck driven by defendant Van Nolf. Plaintiff complained of neck pain and was taken to the hospital. X-rays of plaintiff's neck were negative. She was diagnosed with neck strain. Two months later plaintiff began treating with her family physician for neck pain and headaches. She also consulted several specialists. Eventually plaintiff reported that her neck pain resolved. Several months after the accident, plaintiff developed back pain. Her family physician took her off work for a time and imposed lifting restrictions. A physical medicine and rehabilitation specialist opined that her back pain was not related to the accident. A neurologist detected neck pain with paracervical spasms.

Plaintiff filed suit alleging that the injuries she sustained in the accident resulted in a serious impairment of body function. Van Nolf moved for summary disposition pursuant to MCR 2.116(C)(8) and (10),<sup>1</sup> arguing that no evidence showed that plaintiff suffered an objectively manifested impairment of an important body function that affected her ability to lead her normal life. The trial court granted the motion and dismissed the case, finding that although the evidence showed that plaintiff had an objectively manifested injury in the form of neck

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<sup>1</sup> Brown and Blackledge concurred in the motion.

muscle spasms and that the use of the neck was an important body function, no evidence demonstrated that plaintiff's neck injury affected her ability to lead her normal life.

A trial court's decision on a motion for summary disposition is reviewed de novo on appeal. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).<sup>2</sup>

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 absent any 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).

"In determining whether the impairment of the important body function is "serious," the court should consider the following nonexhaustive list of factors: extent of the injury, treatment required, duration of disability, and extent of residual impairment and prognosis for eventual recovery." *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). In assessing the extent of the injury, a court may compare the plaintiff's lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

To constitute a serious impairment of body function, the impairment must be objectively manifested, must be of an important body function, and must affect the person's general ability to lead his or her normal life. *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 685-687; \_\_\_ NW2d \_\_\_ (2003). The evidence showed that several months after the accident, plaintiff had neck pain with paracervical spasms. Muscle spasms are an objectively manifested injury. *Bennett v Oakley*, 153 Mich App 622, 630; 396 NW2d 451 (1986). The function of the neck is an important body function. One year after the accident plaintiff reported that her neck pain had resolved. Several months after the accident plaintiff began experiencing back problems. Her family physician imposed lifting and movement restrictions on plaintiff's activities after she developed back problems. No evidence showed that plaintiff's back problems were related to the accident. Plaintiff testified that she could no longer do heavy household chores or engage in various activities with her children. However, no evidence showed that her general ability to lead her normal life was adversely affected by an injury caused by the accident. *Kreiner, supra*; *May, supra*. Absent such evidence, plaintiff was unable to make out a prima facie case that she

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<sup>2</sup> The trial court's order did not specify the subrule under which the trial court granted summary disposition. However, the trial court considered material beyond the pleadings in rendering its decision. Therefore, we review the trial court's decision granting summary disposition pursuant to MCR 2.116(C)(10). *Detroit News, Inc v Policemen & Firemen Retirement System*, 252 Mich App 59, 66; 651 NW2d 127 (2002).

suffered a serious impairment of body function. 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); *Kreiner, supra*.

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter