

STATE OF MICHIGAN
COURT OF APPEALS

FLORENCE FAYE HOFFMAN,
Plaintiff-Appellant,

UNPUBLISHED
January 24, 2003

v

RENEE LOUISE DESPELDER,
Defendant-Appellee.

No. 238141
Macomb Circuit Court
LC No. 00-004290-NI

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

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

Plaintiff's vehicle was struck from behind by a vehicle driven by defendant. Plaintiff, who was fifty-seven years old at the time, refused medical treatment at the scene. Four days later plaintiff presented to the emergency room complaining of pain in her right side. She was diagnosed with a possible rib fracture and released. Plaintiff treated with Dr. Policherla, a board-certified neurologist, for headaches and neck and back pain, and was diagnosed with bilateral S1 radiculopathy. She underwent physical therapy for several months. Plaintiff was not placed under restrictions; however, she discontinued certain activities, such as exercising and ballroom dancing. Plaintiff was evaluated by Dr. Glowacki, an orthopedic surgeon, who diagnosed spinal contusions and possible bulging discs.

Plaintiff filed suit alleging the new injuries, including a closed-head injury and the aggravation of pre-existing injuries she sustained as a result of the accident, resulted in a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff's claims did not rise to the threshold level of a serious impairment of body function, and that her condition did not affect her ability to lead her normal life. The trial court granted defendant's motion for summary disposition. The trial court observed that plaintiff did not present the required medical evidence to create a question of fact as to whether she suffered a serious neurological injury resulting from a closed-head injury sustained in the accident. MCL 500.3135(2)(a)(ii); *Churchman v Rickerson*, 240 Mich App 223, 229-232; 611 NW2d 333 (2000).

Furthermore, the trial court noted that plaintiff suffered a back injury after an accident in 1996, and the medical records did not indicate whether her condition was aggravated by the 2000 accident. The trial court also noted that plaintiff was not under any physician-imposed restrictions, and she did not miss work as a result of the accident. The trial court concluded that plaintiff failed to demonstrate her claims met the threshold level of a serious impairment of body function, and plaintiff failed to demonstrate that her injuries affected her general ability to lead her normal life.

Plaintiff moved for reconsideration. She submitted an affidavit from Dr. Policherla, who stated that in his opinion plaintiff might have sustained a serious neurological injury as a result of a closed-head injury suffered in the 2000 accident. The trial court denied plaintiff's motion, noting that no medical record placed in evidence made any reference to a closed-head injury.

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, 653; ___ NW2d ___ (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. *Kreiner v Fischer*, 251 Mich App 513, 515; 651 NW2d 433 (2002).

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). In assessing the extent of the injury, the 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).

We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Cason v Auto Owners Ins Co*, 181 Mich App 600, 609; 450 NW2d 6 (1989).

Plaintiff argues the trial court erred by granting defendant's motion for summary disposition and abused its discretion by denying her motion for reconsideration. We disagree and affirm the trial court's orders. Plaintiff had an objectively manifested injury in the form of bilateral S1 radiculopathy. Nevertheless, she missed no time from work due to the accident, other than for appointments, and required no treatment other than physical therapy for several months. Plaintiff presented uncontradicted evidence that she continued to have pain in her neck and back. However, lingering pain, in and of itself, does not create an issue of fact as to whether an injury has resulted in a serious impairment of body function. *Kallio v Fisher*, 180 Mich App 516, 518-519; 448 NW2d 46 (1989). Plaintiff had no physician-imposed restrictions on her activities. She had no limitations on her ability to work as a therapist, and limitations on her

recreational activities were self-imposed. The trial court determined the issue whether plaintiff suffered a serious impairment of body function was a question of law, MCL 500.3135(2)(a)(ii), and correctly granted defendant's motion for summary disposition.

Although Dr. Policherla's affidavit met the requirements of MCL 500.3135(2)(a)(ii), it was untimely. No evidence demonstrated that plaintiff could not have presented the affidavit in response to defendant's motion for summary disposition. The trial court did not abuse its discretion by denying plaintiff's motion for reconsideration. *Churchman, supra* at 233.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot