

STATE OF MICHIGAN
COURT OF APPEALS

SARAH MCCLINTON,

Plaintiff-Appellant,

v

CHRISTOPHER JOHN HARTWELL,

Defendant-Appellee,

and

CITIZENS INSURANCE COMPANY OF THE
MIDWEST,

Defendant.

UNPUBLISHED

March 18, 2021

No. 352687

Genesee Circuit Court

LC No. 17-110021-NI

Before: MURRAY, C.J., and M. J. KELLY and RICK, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right, challenging the trial court’s order granting summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) in favor of defendant Christopher Hartwell.¹ We affirm.

I. BACKGROUND

This case arises out of an automobile accident that occurred on October 27, 2016. Plaintiff was stopped at a red light when defendant struck the rear end of her vehicle. After the accident, plaintiff drove herself to the hospital to receive treatment for pain in her neck and shoulder. Plaintiff underwent an MRI that revealed damage to her spine. Plaintiff’s doctor compared the results of this MRI to a separate MRI she underwent in 2015, and testified that plaintiff had a

¹ Defendant Citizens Insurance Company of the Midwest is not a party to this appeal.

pathology in each MRI, that the differences between the two were “minimal,” and that he could not determine whether the car accident caused her spinal condition to worsen.

For the first six months following the accident, plaintiff needed assistance from her sister-in-law for daily tasks such as driving and household chores. For more than a year following the accident, plaintiff underwent physical therapy. Plaintiff testified that she still had pain in her neck, pain in her shoulder, headaches, balance problems, and trouble sleeping, and that many of these problems existed prior to the accident, but intensified after. Plaintiff has an extensive medical history that includes back injuries she suffered in a different car accident in 2013. Plaintiff has been on Social Security disability since 1979.

Defendant sought summary disposition under MCR 2.116(C)(10), arguing that plaintiff failed to demonstrate the existence of a serious impairment of a body function sufficient to meet the no-fault tort threshold. The trial court granted defendant’s motion for summary disposition on the basis that plaintiff had failed to establish a genuine issue of material fact as to whether she established an objectively manifested impairment.

II. DISCUSSION

We review de novo a trial court’s decision to grant a motion for summary disposition, and the evidence is viewed in a light most favorable to the nonmoving party. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Summary disposition should be granted under MCR 2.116(C)(10) when the evidence reveals no genuine issue of material fact. *Id.* “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Id.*

The availability of tort liability for noneconomic losses arising out of this automobile accident is governed by former MCL 500.3135,² which provides in relevant part:

(1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

* * *

² The no-fault act was substantially amended by 2019 PA 21, effective June 11, 2019. “In determining whether a statute applies retroactively or prospectively, the intent of the Legislature governs. Statutes are presumed to apply prospectively unless the Legislature clearly manifests the intent for retroactive application.” *Johnson v Pastoriza*, 491 Mich 417, 429; 818 NW2d 279 (2012) (citations omitted). This action was commenced before the amendment, and is therefore governed by the former version of the no-fault act.

(5) As used in this section, “serious impairment of body function” means an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.

“On its face, the statutory language provides three prongs that are necessary to establish a ‘serious impairment of body function’: (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 v Carrier*, 487 Mich 180, 195; 795 NW2d 517 (2010). The term “objectively manifested impairment” refers to “an impairment that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function. In other words, an ‘objectively manifested’ impairment is commonly understood as one observable or perceivable from actual symptoms or conditions.” *Id.* at 196. The Supreme Court has held that to establish objective manifestation, a plaintiff “must introduce evidence establishing that there is a physical basis for their subjective complaints of pain and suffering, and that showing an impairment generally requires medical testimony.” *Id.* at 198 (quotation marks and citation omitted); see also *Patrick v Turkelson*, 322 Mich App 595, 606-607; 913 NW2d 369 (2018).

Since the accident, plaintiff has complained of back pain, neck pain, headaches, balance problems, difficulty sleeping, and “floaters” in her vision. Plaintiff alleged that these problems either arose or intensified following her collision with defendant. The only evidence of an objective medical diagnosis that linked the motor vehicle accident with these subjective problems were the differences between her two MRIs; however, even her own doctor could not conclude that the accident caused the “minimal” progression, and he also testified that the progression was consistent with natural deterioration. Plaintiff’s failure to produce medical evidence connecting her impairments to the accident is especially significant in light of her extensive medical history. Plaintiff has failed to establish “a physical basis for [her] subjective complaints.” *McCormick*, 487 Mich at 198.

Plaintiff argues that the depression she has suffered after the accident constituted an objectively manifested impairment. However, plaintiff has not provided any evidence of how her depression has objectively manifested. Rather, plaintiff has supplied only her testimony that she has had depression since the collision and was prescribed an antidepressant. This is insufficient to satisfy the requirements articulated in *McCormick*, 487 Mich at 198. Therefore, plaintiff has failed to establish an objectively manifested impairment as is required by former MCL 500.3135(5).

Affirmed.

/s/ Christopher M. Murray

/s/ Michael J. Kelly

/s/ Michelle M. Rick