

STATE OF MICHIGAN
COURT OF APPEALS

DEBBIE HENLEY,

Plaintiff-Appellee,

v

NORMAN LEE TYLER,

Defendant-Appellant.

UNPUBLISHED

August 27, 1999

No. 204538

Wayne Circuit Court

LC No. 95-507799 NI

Before: Hoekstra, P.J., and O'Connell and R. J. Danhof*, JJ.

MEMORANDUM.

In this automobile negligence action, defendant appeals as of right from a \$5,000 judgment for plaintiff entered following a jury trial on the question of damages. Defendant challenges the trial court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) on the threshold issue whether plaintiff suffered a serious impairment of body function within the meaning of MCL 500.3135(1); MSA 24.13135(1). We reverse and remand.

We review the trial court's summary disposition ruling de novo. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). The question whether a plaintiff has suffered a serious impairment of body function must be submitted to the trier of fact whenever the evidence, viewed in the light most favorable to the nonmoving party, could cause reasonable minds to differ regarding the answer. *DiFranco v Pickard*, 427 Mich 32, 69; 398 NW2d 896 (1986).¹

In this case, when viewed in the light most favorable to defendant, the evidence was such that reasonable minds could differ with regard to whether plaintiff sustained a serious impairment of body function. The medical evidence before the trial court offered conflicting opinions regarding the seriousness of the injury to plaintiff's neck muscles and her headaches. The evidence suggested that the restriction of her neck movement was limited and was caused by muscle inflammation. Although an initial CT scan revealed a possible disk herniation, follow-up tests were not performed because an electromyograph showed normal results. Plaintiff was erratic in seeking treatment and frequently failed to attend scheduled physical therapy sessions. Different doctors offered varying opinions regarding

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

whether plaintiff suffered from a serious impairment. The evidence did demonstrate that plaintiff had some lingering pain when she did not follow a prescribed course of treatment. However, reasonable minds could differ in determining whether plaintiff's discomfort constituted a serious impairment, and summary disposition was therefore inappropriate. Accordingly, we reverse and remand for a new trial in which the threshold issue of serious impairment is to be submitted to a jury.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

/s/ Robert J. Danhof

¹ We note that MCL 500.3135(2); MSA 24.13135(2), as amended by 1995 PA 222, effective March 28, 1996, sets forth specific instances in which the question of serious impairment is to be determined by the trial court as a matter of law. However, the amendment took effect after this action was filed and is therefore inapplicable here.