

STATE OF MICHIGAN
COURT OF APPEALS

BRENDA MATTHEWS, JEFFREY MATTHEWS,
and BRADLEY MATTHEWS,

UNPUBLISHED
November 30, 1999

Plaintiffs-Appellants,

v

No. 212350
Delta Circuit Court
LC No. 97-013824 NI

FAYE E. TAHASH, a/k/a FAYE E. TAHASH-
PETERSON,

Defendant-Appellee,

and

STATE FARM INSURANCE COMPANY, and
CUMIS GENERAL INSURANCE COMPANY,

Defendants.

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant Faye E. Tahash's motion for summary disposition. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

In mid-June, 1994 the vehicle in which plaintiffs Brenda Matthews, Jeffrey Matthews and Bradley Matthews were riding collided with the vehicle Tahash was driving. Plaintiffs were taken to the hospital, treated, and released. Approximately one month later, Dr. Benson, a chiropractor, began treating plaintiffs. Dr. Benson diagnosed a spinal subluxation in both Brenda Matthews and Jeffrey Matthews. Plaintiffs continued to experience headaches, back pain, and stiffness; however, they did not require treatment beyond September, 1994, and were not placed under restrictions by any physician. Plaintiffs placed restrictions on their own activities.

Plaintiffs filed suit alleging that their injuries constituted a serious impairment of bodily function. MCL 500.3135(2); MSA 24.13135(2). Tahash moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiffs' injuries did not constitute a serious impairment of body function. The trial court granted that motion, finding that plaintiffs' injuries did not meet the serious impairment threshold. Although it is not clear if the court granted summary disposition under MCR 2.116(C)(8) or (10), we assume that it applied (C)(10) to this essentially factual question.

II. Standard of Review

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).

III. Serious Impairment of Body Function

A motion for summary disposition under MCR 2.116(C)(10) tests the factual underpinnings of a claim other than an amount of damages, and the deciding court considers all the evidence, affidavits, pleadings, admissions, and other information available in the record. *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 320-321; 575 NW2d 324 (1998). According to *Atlas Valley Golf & Country Club, Inc v Village of Goodrich*, 227 Mich App 14, 25; 575 NW2d 56 (1998), this Court must look at all the evidence in the light most favorable to the nonmoving party, who must be given the benefit of every reasonable doubt. However, the nonmoving party must present more than mere allegations in order to demonstrate that there is a genuine issue of material fact. MCR 2.116(G)(4); *Etter v Michigan Bell*, 179 Mich App 551, 555; 446 NW2d 500 (1989).

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); MSA 24.13135(7). MCL 500.3135(2); MSA 24.13135(2) specifies when the determination of whether an injury constitutes a serious impairment of body function is a question of law for the court, and reads in part as follows:

(2) For a cause of action for damages pursuant to subsection (1) filed on or after 120 days after the effective date of this subsection, all of the following apply:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement.

Plaintiffs argue that the trial court erred by granting Tahash's motion for summary disposition. We disagree. The treatment plaintiffs received after the accident concluded within two months. Brenda Matthews' headaches did not warrant specialized testing or treatment. Each plaintiff continued to experience some head and neck pain following the accident; nevertheless, no evidence showed that either individual required continuing treatment, in the form of therapy or medication. The presence of lingering pain, in and of itself, does not create a jury question regarding whether an impairment is serious. Furthermore, no evidence showed that plaintiffs were prohibited from engaging in any work-related or recreational activities. Any restrictions on those activities were self-imposed. The trial court did not err in finding that reasonable minds could not differ concerning whether plaintiffs' injuries constituted a serious impairment of body function. MCL 500.3135(2)(a)(ii); MSA 24.13135(2)(a)(ii); *Kallio v Fisher*, 180 Mich App 516, 518-519; 448 NW2d 46 (1989).

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gribbs

/s/ Helene N. White