

STATE OF MICHIGAN
COURT OF APPEALS

VINCENZA GIARDI,

Plaintiff-Appellant,

v

MITRO SOPOLIGA,

Defendant,

and

DAVID ALLEN LAFORGE,

Defendant-Appellee.

UNPUBLISHED

November 20, 2001

No. 224150

Oakland Circuit Court

LC No. 97-000779-NI

Before: Neff, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action in this automobile negligence case. We affirm.

After the conclusion of proofs, plaintiff's counsel moved for a directed verdict and claimed that there was no question of fact that plaintiff sustained a serious impairment of body function as a result of the accident. The trial court denied this motion and submitted the case to the jury. The jury found that defendant's negligence was the proximate cause of plaintiff's injuries but that the injuries did not amount to a serious impairment of body function. Thereafter, plaintiff's counsel filed a motion for a new trial on the grounds that the verdict was against the great weight of the evidence. The trial court denied the motion, noting that serious impairment was an issue of fact for the jury to decide and that their verdict was supported by the evidence.

The trial court's ruling on a directed verdict motion is reviewed de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In reviewing the trial court's ruling, this Court views the evidence presented in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 634-635; 601 NW2d 160 (1999). A directed verdict is appropriate only when no factual question exists upon which reasonable minds may differ,

Meagher, supra, and is generally disfavored in a negligence case. *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996). The same standard of review applies to motions for judgment notwithstanding the verdict (JNOV). *Smith v Jones*, 246 Mich App 270, 273-274; 632 NW2d 509 (2001).

Because plaintiff filed this action in October 1997, it was subject to MCL 500.3135, as amended. *May v Sommerfield*, 239 Mich App 197, 201; 607 NW2d 422 (1999). That statute provides that a person is subject to tort liability for automobile negligence if the injured person suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1). A serious impairment of body function is defined as “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 suffered a serious impairment of body function is a question of law for the court if there is no factual dispute about the nature and extent of the plaintiff’s injuries, or there is a factual dispute but it is immaterial to the determination of whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a). As this Court observed in *Kern v Blethen-Coluni*, 240 Mich App 333, 338; 612 NW2d 838 (2000), “the Legislature overturned the Supreme Court’s *DiFranco*¹ decision by codifying the tort threshold injury standards of *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982),” which had been overruled by *DiFranco*. Because the statutory definition of serious impairment of body function is the same as that adopted in *Cassidy*, it is appropriate to refer to *Cassidy* and cases decided thereunder in deciding this case. *Kern, supra* at 342.

In the instant case, there was a legitimate factual dispute whether defendant’s negligence caused plaintiff to suffer a serious impairment of body function. The evidence indicated that there was a minor collision, following which plaintiff was treated at a local hospital and released with pain medication. She did not seek further medical treatment. At a regularly scheduled doctor’s appointment two weeks later, plaintiff reported whiplash and was given pain medication. It was not until after a second automobile accident that a doctor discovered herniated discs in plaintiff’s neck and back. Although the doctor attributed that injury to the first accident, he had not seen plaintiff before the second accident or reviewed any of her medical records from the first accident. The doctor could not say if plaintiff’s condition would have been the same but for the first accident. Thus, there was an issue of fact whether plaintiff had suffered an objectively manifested injury in the first accident and therefore, the trial court properly denied plaintiff’s motion for a directed verdict or JNOV.

In reviewing a motion for a new trial on the ground that the verdict was against the great weight of the evidence, the trial judge must review the whole body of proofs to determine whether the overwhelming weight of the evidence favored the losing party. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds by *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998); *Bordeaux v Celotex Corp*, 203 Mich App 158, 170; 511 NW2d 899 (1993). Where there is competent evidence to support the finding of the jury, its verdict should not be set aside and a new trial granted solely because the trial court would weigh and evaluate the evidence differently. The trial court cannot substitute its judgment for that of the factfinder. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600

¹ *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986).

NW2d 129 (1999). Because the trial court must make every effort to reconcile seemingly inconsistent verdicts, the jury's verdict is to be upheld, even if arguably inconsistent, if there is an interpretation of the evidence that provides a logical explanation for the verdict. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000). Credibility of witnesses is a question for the jury and the trial court cannot disturb the jury's evaluations of credibility absent exceptional circumstances that are not present here. *Lemmon, supra* at 643-644, 647. The jury may disbelieve the most positive evidence, even when it stands uncontradicted. *Cebulak v Lewis*, 320 Mich 710, 719; 32 NW2d 21 (1948).

The trial court's ruling on a motion for a new trial is reviewed for an abuse of discretion, *McPeak v McPeak (On Remand)*, 233 Mich App 483, 490; 593 NW2d 180 (1999). The trial court's determination that the verdict was not against the great weight of the evidence is given substantial deference. *Bouverette v Westinghouse Elec Corp*, 245 Mich App 391, 403; 628 NW2d 86 (2001). In reviewing the trial court's decision, this Court must engage in an in-depth analysis of the record. *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

The evidence showed that plaintiff had a medically identifiable injury, that being herniated discs. However, as noted above, there was a genuine issue of fact whether that injury was the result of the accident caused by defendant or by a subsequent accident in which defendant was not involved. Moreover, the evidence failed to conclusively establish that any injury caused by defendant significantly affected plaintiff's ability to lead a normal life. *Miller v Purcell*, 246 Mich App 244, 249-250; 631 NW2d 760 (2001). Indeed, plaintiff's activities were not restricted, she could still do housework, albeit with difficulty, and the only change in her activities was that she had discontinued bowling. *Id.* Moreover, the jury's verdict was not inconsistent. Therefore, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Affirmed.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper