

STATE OF MICHIGAN
COURT OF APPEALS

FRANK J. BALMA,

Plaintiff-Appellee,

v

JASON VICTOR LEEP and PAUL A. LEEP,

Defendants-Appellants.

UNPUBLISHED

June 7, 2002

No. 234196

Houghton Circuit Court

LC No. 99-010720-NI

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Defendants appeal as of right a judgment rendered following a jury verdict in plaintiff's favor in this automobile negligence case. We reverse.

Plaintiff sought noneconomic damages for injuries he sustained in an accident involving a vehicle driven by defendant Jason Victor Leep and owned by defendant Paul A. Leep. At the close of plaintiff's case, defendants moved for a directed verdict, and the trial court denied the motion. The jury subsequently found that defendants' negligence proximately caused plaintiff's injuries and that those injuries met the no-fault threshold for recovery. Thereafter, the trial court denied defendants' motion for judgment notwithstanding the verdict (JNOV).

A tortfeasor is subject to liability for noneconomic damages caused by an automobile accident if the injured party suffers "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). Whether a person has suffered serious impairment of body function or permanent serious disfigurement is a question of law for the trial court if no outcome-determinative dispute exists concerning the nature and extent of the person's injuries or, if there is a dispute, if it is immaterial to the determination whether plaintiff suffered serious impairment of body function or permanent serious disfigurement. MCL 500.3135(2)(a); *May v Sommerfield*, 239 Mich App 197, 201; 607 NW2d 422 (1999).

In the present case, the trial court failed to determine whether a factual dispute existed regarding the nature and extent of plaintiff's injuries and submitted the threshold issue to the jury. However, because no material conflict exists between plaintiff's testimony, his doctors' testimony, and the testimony of a doctor who provided an independent medical examination, we decline to remand this case to the trial court for factual findings regarding whether a factual dispute existed concerning the nature and extent of plaintiff's injuries. *Kern v Blethen-Coluni*, 240 Mich App 333, 343-344; 612 NW2d 838 (2000).

Defendants contend the trial court erred in denying its motion for JNOV because plaintiff failed to establish serious impairment of body function as a matter of law. We agree.

A trial court's denial of a motion for JNOV is reviewed de novo. *Morinelli v Provident Life & Accident Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). We must view the testimony and all legitimate inferences from it in the light most favorable to the nonmoving party. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). Only if the evidence failed to establish a claim as a matter of law is JNOV appropriate. *Forge, supra* at 204; *Chiles v Machine Shop, Inc*, 238 Mich App 462, 469; 606 NW2d 398 (1999).

"Serious impairment of body function" is statutorily 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). An important body function is one that affects a person's general ability to live a normal life, which we determine by comparing plaintiff's pre- and post-injury activities. *Kern, supra* at 340. In determining whether the impairment of the important body function is "serious," we consider the following nonexhaustive list of factors: extent of the injury, treatment required, duration of disability, and extent of residual impairment and prognosis for eventual recovery. *Id.* at 341. Also, an injury need not be permanent to be serious. *Id.*

Although the ability to move one's back constitutes an important body function, *Chumley v Chrysler Corp*, 156 Mich App 474, 481; 401 NW2d 879 (1987), plaintiff did not establish serious impairment of body function as a matter of law. Plaintiff's doctors noted he enjoys full range of motion in his back. Although plaintiff had to restrict his work activities for a period of time because of the injuries, neither he nor his doctors indicated his work or recreational activities are currently restricted. Additionally, plaintiff's only treatment for his condition was the use of pain medication, and his prognosis is for continuation of the status quo.

For these reasons, we hold plaintiff's injuries did not affect his general ability to live his normal life and, consequently, he did not suffer serious impairment of body function. *Miller v Purcell*, 246 Mich App 244; 631 NW2d 760 (2001). Therefore, the trial court erred in denying defendants' motion for JNOV.

In light of our resolution of this issue, we need not address defendant's other claims of error.

Reversed.

/s/ Richard Allen Griffin
/s/ Harold Hood
/s/ David H. Sawyer