STATE OF MICHIGAN

COURT OF APPEALS

PANG CHANG,

Plaintiff-Appellant,

v

WESTFIELD INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 25, 2002

No. 234507
Wayne Circuit Court
LC No. 00-023912-CK

Before: Saad, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant. We affirm.

This appeal arises from plaintiff's claim for uninsured motorist coverage under an insurance policy issued by defendant. Plaintiff filed her claim following a head-on collision with another driver, Kelly Ann Elizabeth Casey, in the City of Detroit. According to plaintiff, Casey's vehicle crossed the center line near Collingham Road, and her vehicle struck plaintiff's Toyota Camry.[1]

After plaintiff filed her complaint in this case, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10) and argued that plaintiff's injuries do not constitute a serious impairment of body function under MCL 500.3135. Plaintiff filed an answer and argued that her medical records establish that her injuries meet the threshold requirement in the statutes. Following oral argument, the trial court granted defendant's motion and ruled that, as a matter of law, plaintiff did not suffer a serious impairment of body function. Plaintiff now appeals the trial court's ruling.

"This Court reviews de novo a trial court's decision regarding a motion for summary disposition." *Trepanier v National Amusements, Inc*, 250 Mich App 578, 582; 649 NW2d 754 (2002). As our Supreme Court explained in *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999):

[1] According to plaintiff, in a prior action, the trial court entered a default judgment against Casey in the amount of $150,000 after Casey failed to appear.

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996).

In *Auto Club Ins Ass'n v Hill*, 431 Mich 449, 453, 466; 430 NW2d 636 (1988), our Supreme Court held that "the threshold requirements of MCL 500.3135(1) apply when an insured motorist seeks benefits for noneconomic loss under the uninsured motorist provision of a no-fault policy." Under the no-fault act, a plaintiff may recover noneconomic losses if she has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). Under MCL 500.3135(2)(a), the issue whether the plaintiff has suffered serious impairment of body function is a question of law for the trial court to decide if:

> (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.

Further, under MCL 500.3135(7), " '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."

The trial court correctly ruled that, as a matter of law, plaintiff did not suffer a serious impairment of body function. Plaintiff experienced aches and pains shortly after the car accident. However, plaintiff's x-rays revealed no injury and she had full range of motion. The only objective finding by the emergency room doctor was mild posterior neck tenderness and he told plaintiff to return to work with no restrictions. At her next hospital visit, plaintiff complained of continued aches and pains but, contrary to her deposition testimony, records indicate that her primary complaint was nausea from a muscle ache medication. Furthermore, while Dr. Madhavi Kanneganti signed a disability certificate for plaintiff's absence from work between January 7 and January 15, 1999, plaintiff testified that Dr. Kanneganti urged her to return to work and declined to continue her treatment because plaintiff refused to do so.

Thereafter, in April 1999, Dr. Asit Ray unequivocally stated that he could find no clinical injury to support plaintiff's subjective complaints of pain. Indeed, Dr. Ray conducted various tests and found no abnormalities and he concluded that plaintiff was able to return to work. Though plaintiff testified that Dr. Ray continued to treat her until late 1999 or early 2000, his letter clearly states that there was no basis for further treatment or therapy. Indeed, there is no record evidence of any medical treatment until one year later.

In April 2000, Dr. Haranath Policherla found that plaintiff had limited range of motion in

her neck, though his testing revealed no neck injury. However, a lower lumbar EMG showed left S-1 radiculopathy. Dr. Policherla prescribed massage therapy, which plaintiff continued until July or August 2000. By all accounts, the massage therapy significantly relieved plaintiff's complaints of pain. Dr. Vaqar Siddiqui stated that plaintiff "reported significant improvement" and reported no recent headaches or back pain and discontinued plaintiff's therapy. Plaintiff also testified that the massages improved her ability to work and take care of her children and, as of January 15, 2001, she was performing her work and household chores.

One week after plaintiff's deposition, plaintiff's counsel sent her for an evaluation by Dr. Stefan Glowacki, who indicated that plaintiff complained of neck pain, numbness and headaches and had trouble with heavy household chores. Dr. Glowacki found that plaintiff's range of neck motion was limited, she had neck tenderness, and a muscle spasm. Dr. Glowacki diagnosed plaintiff with post traumatic cephalgia and cervical spine spondylitis. Plaintiff also submitted to an independent medical evaluation in February 2001, and the doctor found no clinical proof of injury.

Plaintiff's primary complaint throughout these proceedings was her neck pain which, she maintained, radiated to her arms and legs. However, for a year and four months after the accident, plaintiff had full range of motion in her neck and, though Dr. Policherla found that her range of neck motion was limited, his tests revealed no neck injury and her discomfort was relieved by massage therapy. Further, on the date of her deposition, plaintiff testified that she was able to lead her normal life, both at work and at home. Dr. Glowacki was the only doctor to conclude that plaintiff has some cervical spine inflammation, which apparently explained her neck pain. However, this diagnosis, rendered two years after the accident, does not rise to a level of a serious impairment of an important body function.

While Dr. Policherla's finding of S-1 radiculopathy may qualify as an "objectively manifested" medical problem, plaintiff did not complain about low back pain until April 2000 and any pain was relieved through massage therapy. Thus, nothing in the record establishes a nexus between this apparently unrelated back problem and the car accident.[2]

For these reasons, the trial court correctly granted summary disposition to defendant because plaintiff failed to establish that she suffered a serious impairment of body function under MCL 500.3135.[3]

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[2] Plaintiff argues that the trial court erred by considering her injuries during a limited period of time. At the motion hearing, the trial court asked plaintiff's counsel whether doctors found an objectively manifested injury between the time of the accident and before the April 2000 lumbar EMG. The trial court judge also emphasized in her bench opinion that plaintiff received no medical treatment between April 1999 and April 2000 and that plaintiff never complained about low back pain until April 2000. This finding was clearly based on the evidence presented and it was proper for the trial court to note the significant gap in plaintiff's symptoms and treatment.

[3] We reject plaintiff's claim that defendant was precluded from challenging the threshold injury issue under the doctrine of res judicata. As defendant correctly observes, plaintiff fails to cite any case law to support this assertion, fails to set forth the requirements for applying res judicata and fails to explain how it should apply to this case. "[T]he burden of proving the applicability

(continued…)

Affirmed.

/s/ Henry William Saad
/s/ Michael R. Smolenski
/s/ Donald S. Owens

(…continued)

of the doctrine of res judicata is on the party asserting it." *Baraga County v State Tax Com'n*, 466 Mich 264, 269; 645 NW2d 13 (2002). Moreover, it is well-established that, on appeal:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Accordingly, we consider this issue abandoned.