

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT SCIATTO and MARY SCIATTO,

Plaintiffs-Appellants,

v

ERIN J. WALKER and ROBERT WALKER,

Defendants-Appellees,

and

MOHAMMAD HAMZA AL HASHEMI,

Defendant.

UNPUBLISHED

December 27, 2002

No. 236456

Wayne Circuit Court

LC No. 00-019545-NO

Before: Griffin, P.J., and White and Murray, JJ.

PER CURIAM.

In this automobile negligence case, plaintiffs appeal as of right the circuit court's grant of summary disposition to the Walker defendants on the basis that no genuine issue of fact remained whether plaintiff Scott Sciatto had suffered a serious impairment of body function. We affirm.

This Court reviews the circuit court's grant of summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.*

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. . . . If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Smith, supra* at 455, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). Citations omitted.]

The no-fault act, MCL 500.3135(1), provides

(1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

The Legislature in enacting 1995 PA 222 amended the no-fault act by codifying the threshold injury standards of *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982). *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). Under the amended act “absent an outcome-determinative genuine factual dispute, the issue of threshold injury is now a question of law for the court.” *Kern, supra* at 341.

[W]hether the plaintiff has suffered serious impairment of body function . . . is for the court to decide as a matter of law if there exists no factual dispute with regard to the nature and extent of the plaintiff’s injuries, or, where there is such a factual dispute, that dispute is not material to the determination whether the plaintiff has suffered a serious impairment of body function or permanent serious disfigurement. [*Churchman v Rickerson*, 240 Mich App 223, 226; 611 NW2d 333 (2000), citing MCL 500.3135(2)(a)(i) and (ii).]

“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.” *Kern, supra* at 340.

[T]he term “important body function” has special meaning in the law. An important body function is a function of the body that affects the person’s general ability to live a normal life. *Cassidy, supra* at 505

In determining whether the impairment of the important body function is “serious,” the court should 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. [Citation omitted.] Finally, although the injury threshold is a significant obstacle to tort recovery, *Cassidy, supra* at 503, “an injury need not be permanent to be serious.” *Id.* at 505. [*Kern, supra* at 340-341.]

Plaintiff Scott Sciatto was 29 years old at the time of the July 1999 accident, was employed full-time at Banner Lumber as a sales representative, and also remodeled residential homes after hours as the lone employee in a business he had owned and operated since 1997, SS Eagle Renovations. Plaintiff testified at deposition that he missed one day of work at Banner Lumber after the accident, and that he left Banner Lumber in December 1999, for reasons unrelated to the July 1999 accident. He also testified that after the July 1999 accident, he had to hire two men to help him in his remodeling business, with heavy lifting and other things, that he continued to suffer pain, and that his life was affected in other ways as well.

The MRI performed by plaintiff’s treating orthopedist, Dr. Singer, in November 1999 revealed a herniated disc in the thoracic spine, at T1-T2, an objective finding. The medical records also state that plaintiff experienced cervical strain, muscle spasms, upper back pain and neck pain. However, the medical records do not link plaintiff’s pain and symptoms to the

thoracic disc herniation; Dr. Singer's records state that the herniated disc "remained asymptomatic," and Dr. Singer discharged plaintiff from physical therapy without restrictions in late February 2000. Further, the independent medical examination (IME) performed of plaintiff in January 2001 showed no evidence of problems related to plaintiff's thoracic spine, no spasms or cervical strain, and concluded that no further treatment was necessary from an orthopedic standpoint.

Regarding the extent of treatment plaintiff required, plaintiff treated with several doctors from August 1999 to or through March 2000. Plaintiff testified at deposition that he last saw his chiropractor, Dr. Jary, in March 2000. He also testified that he continued to see Dr. Singer approximately every other month, but that the appointments were for Dr. Singer to check his progress and give him home exercises. Plaintiff testified that he did not do the home exercises. Plaintiff also testified at deposition that he did not seek physical therapy after he was discharged from it in late February 2000 because his insurance would not cover it. However, there is no indication in the record that plaintiff was advised to return to physical therapy. Plaintiff also testified that when he was discharged from physical therapy in February 2000, he was advised to lift weights for the rest of his life. However, plaintiff testified that he did not do so because he did not want to take the time away from work to go to the health club to which he belonged.

Regarding the extent of residual impairment and prognosis for eventual recovery, plaintiff was discharged from physical therapy with no restrictions and advised to do home exercises and weight-lifting. The conclusion of the doctor that conducted plaintiff's IME in January 2001 was also that plaintiff required no restrictions and no further orthopedic treatment.

Under these circumstances, we conclude that plaintiff's herniated disc of the thoracic spine does not constitute a serious impairment of an important body function.

Plaintiff's remaining arguments do not alter our conclusion. Plaintiff testified at deposition that he no longer bowled or rode roller coasters, but when asked how often he had done so before the accident, he answered two or three times a year, and once a year, respectively. Plaintiff also testified at deposition that his roughhousing with his nieces and nephews was negatively affected by the accident, but he testified that he still roughoused with them, although not for as long as before the accident. Other physical complaints plaintiff alluded to at his deposition were unsupported by documentary evidence or not attributed to the July 29, 1999 accident, including blackouts, dizziness, lessened hearing, and occasional jaw popping.

Two of the three remaining issues plaintiffs raise are sub-questions of the serious impairment issue and were addressed in the analysis above. Plaintiffs' final issue regards the circuit court's reliance on an unpublished case, *French v Murphy*, unpublished per curiam opinion of the Court of Appeals, issued 5/12/00 (Docket No. 214655). The circuit court noted at the hearing that the case lacked precedential value, and even though the court recessed after hearing arguments to read the *French* case, the court's comments from the bench indicate that it also reviewed plaintiff's deposition testimony, and that it concluded based on all the evidence that plaintiff had not shown an objectively manifested impairment of an important body function that affected his ability to lead his normal life. That determination is amply supported by the record.

Affirmed.

/s/ Richard Allen Griffin

/s/ Helene N. White

/s/ Christopher M. Murray