

STATE OF MICHIGAN
COURT OF APPEALS

DONNA MARGARET REID,

Plaintiff-Appellant,

v

ANTHONY CHRISTOPHER CAVATAIO,

Defendant-Appellee,

and

THOMAS CAVATAIO, d/b/a WOLVERINE
TEXTURES,

Defendant.

UNPUBLISHED

April 20, 2004

No. 244615

Macomb Circuit Court

LC No. 2001-000975-NI

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained non-displaced rib and sternal fractures in an automobile accident, and subsequently experienced back and leg pain that limited her ability to work and to engage in other activities. She filed suit alleging that her injuries constituted a serious impairment of body function. Defendant sought summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court granted the motion pursuant to MCR 2.116(C)(10), concluding that no evidence showed that plaintiff's abnormalities were caused by the accident or affected her general ability to lead her normal life.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a).

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). For an impairment to be objectively manifested, there must be a medically identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). In determining whether the impairment of the important body function is serious, the court should consider factors such as the extent of the injury, the treatment required, the duration of the disability, and the extent of residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). In assessing the extent of the injury, a court may compare the plaintiff’s lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Plaintiff’s rib and sternal fractures sustained in the accident were objectively manifested via x-rays and an MRI scan. And the compression fracture in her back and degenerative disc disease were revealed after an MRI. Walking and the use of the back are important body functions. *Kern, supra* at 343; *Chumley v Chrysler Corp*, 156 Mich App 474, 481; 401 NW2d 879 (1986). It is clear that plaintiff’s back condition is an objectively manifested condition that affects an important body function, and her limitations as a result of the increased pain after the accident did affect her general ability to lead a normal life.

But the evidence showed that plaintiff’s back abnormalities, including spinal stenosis, were degenerative in nature and were not *caused* by the accident. However, plaintiff experienced an increase in her back and leg pain, which she and her doctor attributed to the accident, that significantly affected her ability to walk and maintain employment to a much greater degree than had been present before the accident. Although the condition was not caused by the accident, our Supreme Court has held, “Regardless of the preexisting condition, recovery is allowed if the trauma caused by the accident triggered symptoms from that condition.” *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000). It follows that a significant change in these symptoms, if attributed to the accident, would also provide a basis for recovery. Therefore, the question is one of proximate cause. Because we find that a genuine issue of material fact exists with regard to proximate cause, the question is one for the trier of fact. *Holton v A+ Ins Assoc, Inc*, 255 Mich App 318, 326; 661 NW2d 248 (2003). Additionally, we find that there are factual disputes as to the extent of plaintiff’s increase in pain and the degree her limitations increased after the accident which are material to a determination of whether plaintiff has suffered a serious impairment of an important body function.. Accordingly, we find that the trial court erred in granting defendant’s motion for summary disposition.

Reversed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski