

STATE OF MICHIGAN
COURT OF APPEALS

IRIS RIVERA,

Plaintiff-Appellant,

v

CARLOS RIVERA and MARGARITA RIVERA
MEDINA,

Defendants-Appellees,

and

BAO DINH PHAN,

Non-Participating Defendant.

UNPUBLISHED

October 28, 2004

No. 248914

Kent Circuit Court

LC No. 02-002319-NI

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court orders granting summary disposition in favor of defendants and denying her motion for reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, who has spina bifida and who underwent spinal fusion surgery in 1991, was involved in a motor vehicle accident. She filed suit alleging that injuries she sustained in the accident constituted a serious impairment of body function. The trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10), finding that no evidence created a question of fact as to whether plaintiff sustained an objectively manifested injury as a result of the accident.

Plaintiff moved for reconsideration, and in support of her motion submitted a letter from her treating physician, who stated that a CT myelogram performed after the accident showed degenerative changes above plaintiff's spinal fusion. The physician opined that the accident accelerated the degenerative changes. The trial court denied plaintiff's motion.

We review de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). We review a

trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

MCL 500.3135(7) defines "serious impairment of body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." 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, 653; 654 NW2d 604 (2002). 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 person's injuries, or if there is a factual dispute concerning the nature and extent of the injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a). Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

An objectively manifested impairment consists of a medically identifiable injury or a condition that has a physical basis. *Jackson, supra* at 653. Plaintiff experienced back pain both before and after the accident. Pain, in and of itself, is not an objectively manifested condition, and cannot be relied upon to establish the existence of a serious impairment of body function. *Kreiner v Fisher*, 471 Mich 109, 133 n 17; 683 NW2d 611 (2004); *Kallio v Fisher*, 180 Mich App 516, 518-519; 448 NW2d 46 (1989). X-rays taken before and after the accident demonstrated no change in the condition of plaintiff's spine. Initially, plaintiff's physician stated that the CT myelogram, taken after the accident, demonstrated no stenosis (narrowing) above her spinal fusion. No evidence presented in opposition to defendants' motion for summary disposition created an issue of fact as to whether plaintiff suffered an objectively manifested injury as a result of the accident. Absent such evidence, plaintiff was unable to make out a prima facie case that she suffered a serious impairment of body function. The trial court did not err in determining that the issue whether plaintiff suffered a serious impairment of body function was a question of law under the circumstances. MCL 500.3135(2)(a). Summary disposition was proper.

The letter plaintiff submitted in support of her motion for reconsideration was untimely and could have been presented in response to defendants' motion for summary disposition. The trial court did not abuse its discretion by denying the motion. *Churchman, supra* at 233.

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra