

STATE OF MICHIGAN
COURT OF APPEALS

JAMES URIBE ESPINOZA and ANNETTE
LYNN ESPINOZA,

UNPUBLISHED
March 31, 2005

Plaintiffs-Appellants,

v

WADE ERIC DIXON,

No. 251030
Oceana Circuit Court
LC No. 02-002997-NO

Defendant-Appellee.

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

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

A vehicle driven by James Espinoza was struck by a vehicle driven by defendant. Following the accident, Espinoza took a previously scheduled two-week vacation and returned to full-time duty as a conservation officer thereafter. Plaintiffs filed suit alleging that the injuries Espinoza suffered in the accident constituted a serious impairment of body function.¹ Defendant sought summary disposition pursuant to MCR 2.116(C)(10), arguing that no evidence showed that the accident resulted in an objectively manifested injury that affected Espinoza's general ability to lead his normal life. The trial court granted the motion, finding that as a matter of law, Espinoza's injuries did not constitute a serious impairment of body function.

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).

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,

¹ Espinoza had been involved in several accidents and had suffered from neck and back pain and migraine headaches for a number of years before the accident at issue in this case.

652-653; 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 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).

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course of the person's life. The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. The court must examine the plaintiff's life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff's life. In order to determine whether the plaintiff's general ability to lead his or her normal life has been affected by the impairment, the court may consider objective factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Kreiner v Fischer*, 471 Mich 109, 131-134; 683 NW2d 611 (2004).

Following the accident, a physician diagnosed muscle spasms in Espinoza's back. A muscle spasm is an objectively identifiable injury, and the ability to use the back is an important body function. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986). Plaintiffs asserted that Espinoza's neck and back pain and migraine headaches increased after the accident, and that he was not able to engage in certain recreational activities to the extent he had prior to the accident.² Espinoza did not play with his children or engage in activities such as weightlifting or hunting as he had before the accident. However, after the accident Espinoza continued to work full-time, and engaged in vigorous activities as part of his employment.

Espinoza's general course of his overall life was unchanged by the accident. We find no error in the court's conclusion that Espinoza's injuries did not affect "his overall or broad ability to conduct the course of his normal life," and therefore he did not satisfy the "serious impairment of body function" threshold. *Kreiner, supra* at 137-138. Summary disposition was proper.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper

² Contrary to plaintiffs' assertion, the trial court did not grant summary disposition in favor of defendant on the ground that they did not submit affidavits in opposition to defendant's motion for summary disposition. A motion for summary disposition pursuant to MCR 2.116(C)(10) may be supported or opposed by affidavits or other documentary evidence. MCR 2.116(G)(2).