

STATE OF MICHIGAN
COURT OF APPEALS

AMELIA HOSEY,

Plaintiff-Appellant,

v

CHANTAY STARGHILL BERRY,

Defendant-Appellee.

UNPUBLISHED
February 22, 2007

No. 272336
Oakland Circuit Court
LC No. 2003-050311-NI

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this automobile negligence action. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

A person is subject to tort liability for automobile negligence if the injured person "suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A serious impairment of body function is defined as "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).

The trial court did not err in finding that plaintiff sustained an objectively verifiable injury that impaired an important body function. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004); *Netter v Bowman*, 272 Mich App 289, 305; 725 NW2d 353 (2006). An MRI showed severe disc injury to plaintiff's lumbosacral spine that affected plaintiff's ability to move her back. While this injury did not manifest itself until more than two years after the accident, this Court previously determined that the evidence was sufficient to create a genuine issue of fact

regarding causation. *Hosey v Berry*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 2006 (Docket No. 257709).

If an important body function has been impaired and the impairment is objectively manifested, the next question is whether the impairment affected the plaintiff's general ability to lead her normal life. *Kreiner, supra*. In answering this question, the court is to compare the plaintiff's life before and after the accident and consider "the significance of any affected aspects on the course of plaintiff's overall life." *Id.* at 132-133. Factors to consider include "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Id.* at 133.

Viewed in a light most favorable to plaintiff, the evidence indicated that plaintiff suffered a serious injury to her back. When physical therapy and pain-relief injections failed to help, she underwent surgical intervention. She was completely disabled from doing housework or from attending to her children or to her personal needs for the first eight months of 2003, and off work between June 10 and October 5, 2003. Because "an impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff's life is extensive," *Williams v Medukas*, 266 Mich App 505, 508; 702 NW2d 667 (2005), we conclude that the evidence was sufficient to create an issue of fact whether plaintiff's injury affected her general ability to lead her normal life. Therefore, the trial court erred in granting defendant's motion.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio