

STATE OF MICHIGAN
COURT OF APPEALS

ELLEN HODGE,

Plaintiff-Appellant,

v

DONNA L. EDDY, MATTHEW P. EDDY, JUDY
D. RANDOLPH, and LOUIS F. KHON,

Defendants-Appellees.

UNPUBLISHED
December 11, 2007

No. 274991
Jackson Circuit Court
LC No. 05-006315-NI

Before: Davis, P.J., and Murphy and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff filed this action to recover noneconomic damages for injuries allegedly sustained in two separate motor vehicle accidents. Defendants moved for summary disposition on the ground that plaintiff's injuries did not meet the no-fault threshold of a "serious impairment of body function." MCL 500.3135(1) and (7). The trial court found that plaintiff failed to establish that her injuries were objectively manifested or that she had suffered a change in her general ability to lead her normal life. We affirm.

We review de novo decisions on motions for summary disposition made under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition tests the underlying factual support for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). The facts are considered in the light most favorable to the nonmoving party. *Dressel, supra* at 561.

The determination of whether a plaintiff has established "serious impairment of body function" under the no-fault act in order to proceed with a tort action for noneconomic damages is a multi-step process. *Kreiner v Fischer*, 471 Mich 109, 131; 683 NW2d 611 (2004). The court must first determine whether a factual dispute exists regarding the nature and extent of a plaintiff's injuries. *Id.* at 132. If such a factual dispute exists, the court may not decide the issue as a matter of law unless the factual dispute "is not material to the determination whether the

person has suffered a serious impairment of body function.” *Id.* If the court may proceed,¹ it next determines whether an “important body function” was impaired. *Id.* Actual impairment, not just injury is required, and the impairment must be objectively manifested. *Id.* “Subjective complaints that are not medically documented are insufficient.” *Id.* If the claim satisfies the first two prongs, the court then determines whether the impairment has affected the general ability of the plaintiff to lead her normal life. *Id.*

Plaintiff argues that the trial court erred in finding no objective manifestation of her injuries. We disagree. Objective manifestation of an impairment “requires that a plaintiff’s injury must be capable of objective verification by a qualified medical person either because the injury is visually apparent or because it is capable of detection through the use of medical testing.” *Netter v Bowman*, 272 Mich App 289, 305; 725 NW2d 353 (2006).

The trial court noted an absence of any acute problems, injuries, fractures on any x-rays or MRIs after either accident and that her treatment after the first accident appeared to be primarily for refills on pre-accident prescriptions. It noted that physical examinations revealed only plaintiff’s subjective complaints of pain or tenderness and that she failed to appear for all but one physical therapy session. One physician even noted that her symptoms were not consistent with the objective findings of medical testing. The August 28, 2004 MRI showed mild bulging at C2-3, C4-5, C5-6 and C6-7 attributable to degenerative changes by the physician and unrelated to the accident. By May 19, 2005, an MRI showed no disc bulging and the August 17, 2005 MRI was “essentially unchanged” from the one in May. Reviewing the evidence in the light most favorable to the plaintiff, there is no evidence in the record of an objectively manifested impairment.

Because we find that the trial court correctly found no objectively manifested impairment, we need not reach plaintiff’s argument regarding the effect of her allegedly objectively manifested impairments on her general ability to lead her normal life.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Deborah A. Servitto

¹ Plaintiff contends that a factual dispute exists regarding the nature and extent of her injuries, but we do not perceive a factual dispute material to whether she has suffered a serious impairment of body function, particularly given that all parties rely on the same medical records and documents.