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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Brittany Green,

Plaintiff,

vs.

Stephanie Hurst,

Defendant.

No. CV-08-447-PHX-DGC

ORDER

This action arose from an automobile accident that occurred on April 1, 2006. Brittany Green was a passenger in a vehicle driven by her cousin, Stephanie Hurst. Hurst was driving on a main road when she began to turn right into a residential neighborhood. Realizing that she was on the wrong street, Hurst turned around and began to make a left turn back onto the main road when she collided with another vehicle.

Green filed a complaint asserting a negligence claim against Hurst. Green alleges that as a result of the accident she suffered calf bruises, disc bulges, and neck and back strain creating a partial permanent disability. She further claims that the accident caused her severe emotional distress. She seeks damages for healthcare costs in excess of \$12,000 and non-economic damages in the amount of \$200,000. Dkt. #2.

Green has filed a motion for summary adjudication of issues. Dkt. #45. The motion has been fully briefed. Dkt. ##53, 55, 57. For reasons that follow, the Court will grant the

1 motion in part and deny it in part.¹

2 To prevail on her negligence claim, Green must prove four elements: a duty on the
3 part of Hurst to exercise reasonable care, a breach of that duty, a causal connection between
4 Hurst's conduct and the claimed injuries, and actual damages. *See Gipson v. Kasay*, 150
5 P.3d 228, 230 (Ariz. 2007). The existence of a duty is generally a question of law. *See*
6 *Ritchie v. Krasner*, --- P.3d ---, 2009 WL 1065195, at *2 (Ariz. Ct. App. Apr. 21, 2009).
7 "The other elements of negligence are factual issues, and are generally within the province
8 of the jury." *Id.*

9 Green seeks summary judgment on three issues: (1) that Hurst was "negligent" in
10 causing the accident, (2) that the accident caused Green to suffer calf bruises, cervicalgia or
11 cervical strain, thoracic strain, and lumbar strain, all resulting in a 10% partial permanent
12 disability, and (3) that the accident caused Green pain and suffering and emotional distress
13 and will continue to do so for the rest of her life. Dkt. #45. Hurst does not dispute that she
14 breached her duty of reasonable care to Green and is solely at fault for the accident. Dkt. #53
15 at 2; *see* Dkt. #45-2 at 6-7. The Court will therefore grant summary judgment in Green's
16 favor with respect to the first two elements of her negligence claim: a duty on the part of
17 Hurst to exercise reasonable care and a breach of that duty. *See Gipson*, 150 P.3d at 230.
18 Hurst objects to a finding that she was "negligent" because such a finding includes the
19 additional elements of causation and damages, and Hurst asserts that these issues are disputed
20 and may not be decided on Green's summary judgment motion. Dkt. #53 at 2.

21 Green has presented evidence that she had no neck or back complaints prior to the
22 accident but now suffers from constant pain (Dkt. #45-7 ¶¶ 4, 8), that she has been treated
23 for neck and back injuries by several doctors beginning on April 6, 2006 (*id.* ¶¶ 6, 9), and
24 that those doctors have opined that her cervicalgia and lumbar and thoracic strains were
25 caused by the April 1, 2006 accident (*id.* ¶¶ 11-12) and have resulted in a 10% permanent

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27 ¹Hurst's request for oral argument is denied because it will not aid the Court's
28 decision or result in unfair prejudice to Hurst. *See Lake at Las Vegas Investors Group, Inc.*
v. Pac. Dev. Malibu Corp., 933 F.2d 724, 729 (9th Cir. 1991).

1 impairment (*id.* ¶¶ 13-14). Green seeks summary judgment on the ground that given this
2 evidence, she “clearly satisfies the relatively relaxed standards in Arizona for proving the
3 causation of medical conditions” and has “easily carried her burden of proof that her injuries
4 and pain are permanent.” Dkt. #45-6 at 5-6 (citations omitted).

5 Green misunderstands her summary judgment burden. As the party with the burden
6 of proof at trial, Green must establish her negligence claim “beyond controversy” to warrant
7 summary judgment in her favor. *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888
8 (9th Cir. 2003); *see Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (to obtain
9 summary judgment the plaintiff must establish “beyond peradventure” all elements of her
10 claim); *Torres Vargas v. Santiago Cummings*, 149 F.3d 29, 35 (1st Cir. 1998) (party with
11 burden of proof cannot obtain summary judgment unless her evidence is “conclusive”).
12 Green’s evidence of causation and damages is sufficiently probative to entitle her to a trial
13 on those issues, but she has failed to show that the evidence “affirmatively demonstrate[s]
14 that no reasonable trier of fact could find other than for [her].” *Sorekun v. Thrifty Payless,*
15 *Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).

16 As Hurst correctly notes in her response (Dkt. #53 at 3), the cases Green cites in
17 support of her motion concern the quantum of evidence necessary to sustain a jury verdict.
18 *See* Dkt. #45-6 at 5-6. Specifically, the cases stand for the general rules that a finding of
19 causation will be sustained on appeal where there is “medical evidence of the possibility of
20 the existence of the causal relationship together with other evidence or circumstances
21 indicating such relationship,” *Ideal Food Products Co. v. Rupe*, 261 P.2d 992, 994 (Ariz.
22 1953), and that the permanency of an injury need not be proven by medical testimony where
23 there is other “evidence or testimony from which it may be inferred that the injury is in fact
24 permanent[.]” *City of Phoenix v. Mullen*, 174 P.2d 422, 425 (Ariz. 1946).² Green cites no
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26 ²*See also* *Hirsh v. Manley*, 300 P.2d 588 (1956); *Coca-Cola Bottling Co. of Tucson*
27 *v. Fitzgerald*, 413 P.2d 869 (Ariz. Ct. App. 1966); *Patania v. Silverstone*, 424 P.2d 139
28 (Ariz. Ct. App. 1966); *Montague v. Deagle*, 462 P.2d 403 (Ariz. Ct. App. 1969); *Kreisman*
v. Thomas, 469 P.2d 107 (Ariz. Ct. App. 1970).

1 case in which the plaintiff obtained summary judgment on the issues of causation and
2 damages.

3 Green contends that she is entitled to summary judgment because Hurst has produced
4 no affirmative evidence on causation or the permanency of Green’s injuries. Dkt. ##45-6 at
5 6, 55 at 1. But Green has the burden of proof on these issues, and Hurst has identified
6 numerous factual issues from the record that she will assert at trial to show that Green cannot
7 carry her burden of proof. Dkt. #53. These factual issues present jury questions.

8 Whether an accident is “the proximate cause of the injury or damages is, generally,
9 a question for the jury.” *Smith v. Chapman*, 564 P.2d 900, 903 (Ariz. 1977) (en banc).
10 Similarly, the “nature, severity and extent of [one’s] injuries and whether they are supported
11 by medical or other expert witnesses is a question for the trier of fact.” *Ball v. Prentice*, 781
12 P.2d 628, 630 (Ariz. Ct. App. 1989); *see generally Anderson v. Liberty Lobby, Inc.*, 477 U.S.
13 242, 255 (1986) (“Credibility determinations, the weighing of evidence, and the drawing of
14 inferences from the facts are jury functions, not those of a judge[.]”). Green has failed to
15 show that her evidence on the issues of causation and damages is so convincing that no
16 reasonable trier of fact could find other than for her. The Court will therefore deny her
17 motion for summary adjudication of those issues. *See James*, 2008 WL 686402, at *2.

18 Hurst requests in her response that summary judgment be entered in her favor on
19 Green’s emotional distress claim based on Green’s failure to support that claim with some
20 evidence. Dkt. #53 at 5. Because Hurst did not file a motion for summary judgment on this
21 issue, the Court will not grant summary judgment in her favor.

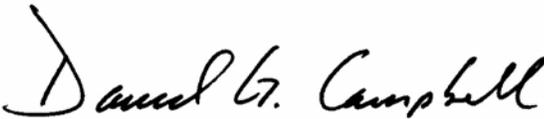
22 **IT IS ORDERED:**

- 23 1. Plaintiff’s motion for summary adjudication of issues (Dkt. #45) is **granted in**
24 **part and denied in part**. The motion is granted with respect to the first two
25 elements of her negligence claim: a duty on the part of Defendant to exercise
26 reasonable care and a breach of that duty. The motion is denied with respect
27 to the elements of causation and damages.
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2. The Court will set a final pretrial conference by separate order.

DATED this 6th day of July, 2009.



David G. Campbell
United States District Judge