

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN STEWART CRANDALL and JODY
CRANDALL,

UNPUBLISHED
May 7, 1999

Plaintiffs-Appellants,

v

No. 202296
Ingham Circuit Court
LC No. 96-082667 NI

WILLIAM EARL RICHMOND and JACKSON
IRON & METAL COMPANY,

Defendants-Appellees.

Before: Kelly, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

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

On September 17, 1993 the vehicle driven by Brian Campbell (hereinafter plaintiff) was struck from the rear by a semi-truck owned by defendant Jackson Iron & Metal Company and driven by defendant William Richmond. Plaintiff informed medical personnel that he felt pain in his neck, back, and knees. X-rays taken at the hospital were negative. Four days later, plaintiff sought follow-up treatment with his personal physician, Dr. Handelsman. While he reported pain in his trapezius and neck region and expressed concern about a disc injury, he indicated that his condition had improved. On October 6, 1993 plaintiff reported that he was almost entirely free of pain. Dr. Handelsman concluded that no further treatment was required, and that plaintiff could return to work without restrictions. Subsequently, beginning on January 20, 1994, plaintiff made several visits to Dr. Handelsman for treatment of lower back pain.

Plaintiff filed suit alleging that his injuries constituted a serious impairment of body function, MCL 500.3135(1); MSA 24.13135(1), and may have aggravated pre-existing conditions. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that a genuine issue of fact did not exist because reasonable minds could not differ on the issue of whether plaintiff's injuries sustained in the accident constituted a serious impairment of body function under the standard established in

DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986). The trial court granted the motion, finding both that plaintiff's neck injury did not meet the serious impairment of body function threshold, and that the connection between plaintiff's lower back condition and the accident was speculative.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

In *DiFranco, supra*, our Supreme Court held that a serious impairment of body function need not be an impairment of the entire body or of an important body function. The focus is on how the injuries affected a particular body function. In determining whether an impairment was serious, factors to be considered include that particular function impaired, the extent of the impairment, the treatment required to correct the impairment, the length of time the impairment existed, and any other relevant factors. An impairment need not be permanent to be deemed serious. If reasonable minds could differ on the issue of whether the impairment was serious, the issue must be submitted to the jury. *Id.* at 67-69.

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Plaintiff's neck injury did not seriously impinge on his ability to engage in daily activities, did not prevent him from working, did not require complicated treatment, and was considered by his physician to have resolved within one month of the accident. That plaintiff may have had lingering minor pain did not create a jury question as to whether his impairment was serious. This case is factually similar to *Kallio v Fisher*, 180 Mich App 516; 448 NW2d 46 (1989), in which the plaintiff's whiplash injury resolved two months after the accident following a course of basic treatment. The plaintiff's family physician considered him healed, notwithstanding the fact that he had some lingering pain. We affirmed the circuit court's grant of summary disposition, finding that reasonable minds could not differ in concluding that the plaintiff's injury did not constitute a serious impairment of body function. *Id.* at 518-519. Similarly, in the instant case, the trial court did not err in finding that reasonable minds could not differ on the issue of whether plaintiff's neck injury constituted a serious impairment of body function under the *DiFranco, supra*, test.

Furthermore, the trial court did not err in concluding that the evidence did not create an issue of fact as to whether plaintiff's pre-existing lower back condition was aggravated by the accident. Neither Dr. Handelsman nor an independent medical examiner attributed plaintiff's lower back pain to the accident. Plaintiff's own belief that the pain was attributable to the accident was based on conjecture. Plaintiff did not create an issue of fact regarding causation; the trial court correctly decided the issue as one of law. *Reeves v Kmart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Michael J. Kelly
/s/ Janet T. Neff
/s/ Michael R. Smolenski