

STATE OF MICHIGAN
COURT OF APPEALS

FRANK AMAN,

Plaintiff-Appellant,

v

VER HAGE MOTOR SALES COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 9, 2004

No. 249079
Ottawa Circuit Court
LC No. 02-043860-NI

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals 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 in which plaintiff was riding collided with a truck owned by defendant. Plaintiff presented to the emergency room complaining of neck, back, and leg pain, and was diagnosed with neck and back strain.¹ Plaintiff filed suit alleging that the injuries he received in the accident constituted a serious impairment of body function. Defendant moved for 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 plaintiff's general ability to lead his normal life. The trial court granted the motion, finding that no evidence created a question of fact as to whether plaintiff suffered an objectively manifested injury as a result of the accident.

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, 652-653; 654 NW2d 604 (2002). Whether a person has suffered a serious impairment of body

¹ Plaintiff began suffering from back problems in 1977, and underwent back surgery in 1977, 1984, and 2001. He has received social security disability benefits since 1992.

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). Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004).

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. *Id.* at 132. 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 objective impairment, the court may consider 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. *Id.* at 132-133.

Regarding an objectively manifested impairment, plaintiff experienced back pain both prior to and following the accident, and on one occasion following the accident a physician diagnosed muscle spasms. 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). However, plaintiff presented no evidence that created an issue of fact as to whether the spasms were caused by the accident. His assertion that he experienced pain following the accident is not sufficient to demonstrate the existence of an injury. Pain, in and of itself, is not an objectively manifested condition, and cannot be relied upon to establish the existence of a serious impairment of body function. *Kreiner, supra* at 133 n 17. No evidence presented in opposition to defendant's motion for summary disposition created an issue of fact as to whether plaintiff suffered an objectively manifested injury as a result of the accident. Absent such evidence, plaintiff was unable to make out a prima facie case that he suffered a serious impairment of body function because evidence establishing the causation element was not presented. The trial court did not err in determining that the issue of whether plaintiff suffered a serious impairment of body function was a question of law under the circumstances, MCL 500.3135(2)(a), and correctly granted summary disposition.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski