

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

GINA N. YAGODA,

Plaintiff-Appellant,

v

JAMES FRANCIS DAVIS,

Defendant-Appellee.

DEC 4 1986

No. 89323

BEFORE: MacKenzie, P.J., and Bronson and R.A. Benson*, JJ.

PER CURIAM

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on the ground that plaintiff's injuries failed as a matter of law to meet the threshold requirement to establish a serious impairment of bodily function under MCL 500.3135; MSA 24.13135. We affirm.

When there is no factual dispute regarding the nature and extent of a plaintiff's injuries, or when there is a dispute, but the dispute is not material to the determination of whether plaintiff has suffered a serious impairment of body function, the trial court must decide as a matter of law whether the threshold requirement of serious impairment of a body function has been met. Cassidy v McGovern, 415 Mich 483, 502; 330 NW2d 22 (1982). The question of serious impairment of body function is decided on a case-by-case basis. Impairment of a body function actually means impairment of an important body function. The impairment must be serious, and the impairment must be objectively manifested. Williams v Payne, 131 Mich App 403, 409; 346 NW2d 63 (1984). In determining the seriousness of an injury required for a serious impairment of a body function, courts should consider this threshold in

*Circuit Judge, sitting on the Court of Appeals by assignment.

conjunction with the other threshold requirements for a tort action for noneconomic loss: death and permanent serious disfigurement. Cassidy, supra, at 503.

In the instant case, it appears that plaintiff's injuries essentially constitute back pain and some limitation in motion in the cervical spine region. Plaintiff has not demonstrated that her injuries are subject to medical measurement. Although Dr. Newman's examination revealed some mild degenerative changes in plaintiff's spine, plaintiff has not established any causal connection between that condition and her accident.

Furthermore, plaintiff's injury has not significantly affected her ability to lead a normal life. Plaintiff maintains that she experiences severe pain if she is required to stand or sit for an extended period of time, that she suffers sexual dysfunction, and that she had to discontinue her participation in aerobics, volleyball, and dancing. Although plaintiff may experience some difficulties in her daily life as a result of the car accident, we do not believe those difficulties interfere with her normal lifestyle in a significant way. Kucera v Norton, 140 Mich App 156; 363 NW2d 11 (1984), lv gtd 422 Mich 935 (1985); Sherrell v Bugaski, 140 Mich App 708; 364 NW2d 684 (1984); Saline v Shepler, 142 Mich App 145; 369 NW2d 282 (1985).

Plaintiff's contention that the court erred in granting defendant's motion for summary disposition because discovery was not complete is not well-taken. Plaintiff never raised this issue below, instead relying on the medical records, her own deposition, and affidavit in opposing the motion. Thus, this portion of plaintiff's argument is precluded from appellate review. See Page v Clark, 142 Mich App 697, 698-699; 370 NW2d 15 (1985). Moreover, for purposes of a motion for summary disposition, discovery need not be

complete; the question is merely whether further discovery stands a fair chance of uncovering factual support for plaintiff's position. Id. In the instant case, plaintiff has failed to explain how further discovery would disclose additional facts in support of her claim. We are not persuaded that further discovery would be of any avail to plaintiff. Id.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Robert A. Benson

Judge Bronson not participating.