

STATE OF MICHIGAN
COURT OF APPEALS

DONNA M. FULLER and SHELLY FULLER,

Plaintiffs-Appellants,

v

NO. 85470

DAVID JAMES HEALY, E & O CAB SERVICE
CORPORATION, a Michigan corporation,
jointly and severally,

Defendants-Appellees.

Before: M.J. Kelly, P.J., J.H. Gillis and J.R. Ernst*, JJ.

Per Curiam

Plaintiffs appeal as of right from an order of summary disposition entered in favor of defendant David Healy for plaintiff's failure to meet the threshold requirements of serious impairment of body function and/or serious permanent disfigurement, as required under MCL 500.3135(1); MSA 24.13135(1). We affirm.

Donna Fuller and her then 12-year-old daughter, Shelly Fuller, were involved in an automobile accident on November 20, 1980, when the taxi cab in which they were riding collided with another vehicle. Plaintiffs filed this tort action for noneconomic losses on September 20, 1983, naming as defendants the taxi cab company, the driver of the cab and the driver-owner of the other automobile. According to plaintiffs' brief on appeal, the taxi cab driver could not be located and was therefore never served. The defendant cab company, although served, is in default and apparently no longer in business. Defendant David Healy, the owner and operator of the other car, is the sole defender of this action.

As a result of the accident, plaintiff Donna Fuller suffered neck and back injuries for which she treated with Dr. Donald H. Wittenberg from December 1, 1980, until September 8,

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

1981. Dr. Wittenberg indicates that on the date of his first examination, he discovered a limitation of motion in the lumbar spine and spasm in all directions. At the conclusion of 10 months of physical therapy consisting primarily of ultra sound and diathermy, plaintiff still complained of headaches and neck and arm pain. She is diagnosed as suffering from traumatic lumbar myofascitis and interligamentous sprain and strain of the cervical spine. According to plaintiff Donna Fuller's deposition testimony, she continues to experience periodic pain in her neck, particularly in cold weather or when lifting objects above her head. Her discomfort is aggravated by housework, which she nevertheless continues to perform. Plaintiff Shelly Fuller also suffered soft tissue injuries for which she was treated by Dr. Wittenberg from December 1, 1980 until June of 1981. At her first examination, Dr. Wittenberg described Shelly Fuller as having "mild limitation of motion with mild spasm in all directions." At the time of Shelly Fuller's discharge, she was diagnosed as suffering from mild traumatic lumbar myofascitis.

Nothing in the record suggests that plaintiffs' back or neck injuries have prevented them from leading normal lives. Walker v Calwell, 148 Mich App 827, 832; 385 NW2d 703 (1986). Moreover, plaintiffs have failed to support their claims with any objective evidence of injuries. Dr. Wittenberg's findings of tenderness based on plaintiff's complaints and based on range of motion tests measure only plaintiffs' subjective responses to the pain stimulus. Franz v Woods, 145 Mich App 169; 377 NW2d 373 (1985). Plaintiffs' own physician admits that his objective tests failed to reveal any abnormalities.

Defendant Shelly Fuller also suffered a laceration on the inside of her upper lip as well as the loss of a nerve in one of her teeth, which required root canal treatment. We agree with the trial court that neither of these injuries meet the threshold requirement of serious impairment of body function comparable to

death or serious permanent disfigurement. Franz v Woods, supra at 173.

Finally, the trial court did not err in concluding that plaintiff Donna Fuller failed to meet the threshold requirement of serious permanent disfigurement with regard to the scar she sustained on her left eyebrow as a result of the laceration received in the accident. As described by the plastic surgeon who examined plaintiff on October 10, 1982, the scar is only 1.5 centimeters in length. The photograph attached to plaintiff's brief on appeal and presented below to the trial court supports the physician's evaluation. As with plaintiff's scar in Nelson v Myers, 146 Mich App 444; 381 NW2d 407 (1985), the scar in this case though permanent is not serious. In Williams v Payne, 131 Mich App 403, 411-412; 346 NW2d 564 (1984), we noted the special opportunity of the trial court to physically observe disfigurements which are alleged to be serious. We have not been presented with any argument or evidence on appeal suggesting that we should substitute our judgment for that of the trial court's.

Affirmed.

/s/ Michael J. Kelly
/s/ John H. Gillis
/s/ J. Richard Ernst