

STATE OF MICHIGAN  
COURT OF APPEALS

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SANDRA WISNIEWSKI,

Plaintiff-Appellant,

v

SHANNON M. DEMYAN and ROBERT  
DEMYAN, III,

Defendants-Appellees.

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UNPUBLISHED

August 2, 2005

No. 253053

Wayne Circuit Court

LC No. 02-200464-NI

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of defendants' motion for summary disposition under MCR 2.116(C)(10) finding there were no genuine issues of material fact whether plaintiff had suffered a serious impairment of body function sufficient to meet the threshold requirements of MCL 500.3135. We affirm.

Plaintiff's only issue on appeal is that the trial court's finding that she failed to demonstrate a serious impairment of body function was error. This determination is a question of law to be decided by the court, unless there is a factual dispute concerning the nature and extent of the person's injuries or there is a factual dispute, but it is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a)(i), (ii). Here there is no dispute as to plaintiff's injuries, so it is a question of law. Questions of law are reviewed de novo. *Bennett v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

The no-fault insurance act provides, "a person remains subject to tort liability for noneconomic loss . . . if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A serious impairment of body function is defined as "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). This definition led this Court in *Kreiner v Fischer*, 251 Mich App 513; 651 NW2d 433 (2002), rev'd on other grounds 471 Mich 109; 683 NW2d 611 (2004) to prescribe a three prong test for determination of the issue. That is, an injury must be (1) an objectively manifested impairment, (2) to an important body function, which (3) affects a person's general ability to lead his or her normal life. *Id.* at 516-517. Plaintiff maintains she has met, and defendants counter she has not met, the first prong of the test. The trial court ruled that in examining the issue, this Court's

holding in *Garris v Vanderlaan*, 146 Mich App 619; 381 NW2d 412 (1985) was controlling and therefore granted defendants' motion for summary disposition.

Plaintiff contends on appeal that her back and spinal injuries demonstrate an identifiable medical condition which triggered her psychological and psychiatric claims, later diagnosed as post traumatic stress disorder (PTSD). However, this issue was dismissed pursuant to plaintiff's stipulation at the motion hearing. Therefore, plaintiff has waived this issue for appeal. *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001) ("A party cannot stipulate a matter and then argue on appeal that the resultant action was error.")

To the extent that plaintiff argues that she suffered from PTSD as a result of the accident that constitutes her impairment here, her argument fails. This Court examined what constitutes an objectively manifested impairment in *Jackson v Nelson*, 252 Mich App 643; 654 NW2d 604 (2002). This Court held in order to be objectively manifested, an impairment must be (1) medically identifiable; (2) either an injury or a condition; and (3) have a physical basis. *Id.* at 649. Here, plaintiff presented no evidence of any PTSD. Therefore, her injury is not objectively manifested, and the trial court's grant of defendants' motion for summary disposition was not in error.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Richard A. Bandstra  
/s/ Kirsten Frank Kelly