

STATE OF MICHIGAN
COURT OF APPEALS

BUNNY LANE PATENGE,

Plaintiff-Appellant,

v

ESTATE OF GORDON D. KNIGHT,

Defendant-Appellee.

UNPUBLISHED

March 11, 2003

No. 238893

Ingham Circuit Court

LC No. 00-091490-NI

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the December 14, 2001 order granting defendant's motion for summary disposition in this no-fault action. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action for noneconomic damages, asserting that neck and shoulder injuries incurred in a motor vehicle accident constituted a serious impairment of body function. The trial court found that her injuries did not affect plaintiff's general ability to lead her normal life, and granted summary disposition to defendant. We review de novo a trial court's grant of summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Under MCL 500.3135 a person remains subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. The issue of whether an injured person has suffered serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the person's injuries, or if there is a dispute that is not material to the determination. MCL 500.3135(2)(a). Otherwise, the determination whether the plaintiff suffered a serious impairment of a body function is a question of fact for the jury. *Kreiner v Fischer*, 251 Mich App 513, 515; 651 NW2d 433 (2002)

In determining whether a plaintiff has suffered a serious impairment of body function, the trial court must consider the nature and extent of the injuries. *May v Sommerfield*, 239 Mich App 197, 202-203; 607 NW2d 422 (1999). The court is required to find whether the plaintiff has an objectively manifested impairment, whether an important body function is impaired, and whether that impairment affects the plaintiff's general ability to lead her normal life. *Id.*

A court should compare plaintiff's lifestyle before and after the accident in determining whether a factual dispute exists with respect to the extent of plaintiff's injuries. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000). A plaintiff must show that his general ability to lead his normal life has been significantly altered by his injury. *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001).

Here, there was objective evidence showing an injury to plaintiff affecting an important body function. Further, plaintiff's deposition testimony created a fact question regarding whether the injury significantly affected plaintiff's ability to lead her normal life. Plaintiff testified that she takes two to three days per month off from work due to her medical condition resulting from the accident, that her ability to do ordinary housework and to participate in recreational activities that she previously enjoyed was either not feasible or greatly restricted, and that she is unable to ride in a motor vehicle for any significant period of time. Further, she lives with almost constant pain for which she takes medication and is facing the decision on whether to have major back surgery. Under these circumstances, a question of fact exists as to whether plaintiff's injury affected her ability to lead her normal life. The trial court erred by finding that the issue of whether plaintiff suffered a serious impairment of a body function was a question of law. MCL 500.3135(2)(a); *May, supra*. The evidence required that the determination of whether plaintiff suffered a serious impairment of body function be made by the jury. *Kreiner, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Joel P. Hoekstra