

STATE OF MICHIGAN
COURT OF APPEALS

RYAN AUSTIN,

Plaintiff-Appellee,

v

JOSHUA CORBIN and
JAMES CORBIN,

Defendants-Appellants.

UNPUBLISHED
December 14, 2004

No. 247056
Macomb Circuit Court
LC No. 01-000631-NI

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

In this automobile negligence action, defendants appeal as of right from a \$122,628.09 jury verdict and judgment in favor of plaintiff. We reverse and remand for entry of judgment in favor of defendant. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Proceedings

This appeal arises out of a motor vehicle accident that occurred on December 7, 2000, in the early morning hours between 7:25 a.m. and 7:30 a.m. when defendants'¹ vehicle struck plaintiff as he was walking in the parking lot of his high school. After he was struck, plaintiff's body hit the hood, the windshield and fell to the ground. The school nurse's examination revealed bruises on plaintiff's back. Plaintiff subsequently went to the emergency room, where the treating physician prescribed a back brace. Approximately one week after the accident, plaintiff visited a physician, Dr. Sidhu, who prescribed medication and advised plaintiff to continue wearing the back brace, which plaintiff wore for approximately two months, except when showering or driving. Plaintiff was advised not to bend over or lift anything over thirty pounds.

¹ The vehicle was owned by defendant James Corbin but actually driven by his son, defendant Joshua Corbin. Plaintiff pursued a negligent entrustment claim against defendant James Corbin.

Within ten days of the accident, plaintiff returned to work, installing car radios and compact disc players. Plaintiff's testimony indicated he returned to work out of economic necessity, and that he worked full-time and any available overtime. Plaintiff frequently needed assistance with installations from his coworkers, as the installations required an extensive amount of bending. Plaintiff returned to school one month after the accident, including Christmas holidays. According to plaintiff, his employer was more lenient than his school regarding his reduced abilities. Once plaintiff returned to school, he worked and attended classes simultaneously. Although plaintiff missed one month of school, he was able to graduate on time. In January of 2002, he enrolled in community college. At the time of trial, plaintiff was enrolled in two classes and working forty-eight hours a week.

After plaintiff's last visit to Dr. Sidhu in January of 2001, he was not seen by a physician for back pain until February 25, 2002, when he underwent an independent medical examination by Dr. Charles Harvey. The exam was entirely normal. He then did not see another physician for back pain until May of 2002, when he scheduled an appointment with Dr. Kenneth Scott. Dr. Scott prescribed an anti-inflammatory medication and physical therapy. Beginning in May 2002, plaintiff went to physical therapy twice a week for four or five months. At the time of trial, plaintiff attended physical therapy once a month. Plaintiff conceded at trial that the physical therapy had improved his back condition.

Plaintiff returned to Dr. Scott in August 2002, after plaintiff experienced pain when he attempted to ride a horse. Plaintiff visited Dr. Scott a third time in December 2002, where Dr. Scott prescribed Skelaxin, but did not place any restrictions on plaintiff's activities. At the time of trial, plaintiff was still taking Skelaxin.

According to plaintiff, although he experiences frequent back pain, he does not refrain from any activities. Plaintiff experiences pain when bending over, lifting heavy objects, sitting for long periods of time, driving, horseback riding, jet skiing and playing sports. Despite plaintiff's discomfort, he nonetheless attempts to participate in the activities. Plaintiff has, however, had to restrict the amount of time that he spends participating in the leisure activities. Additionally, plaintiff is unable to perform household chores, such as taking out the trash, mowing the lawn or shoveling. Plaintiff's father also testified regarding plaintiff's reduced ability to participate in household chores.

At trial, Dr. Scott's video deposition was admitted into evidence. According to Dr. Scott, x-rays taken on May 22, 2002, revealed that plaintiff had an old compression fracture without any nerve damage. Plaintiff's reflexes, motor functions, and sensations were all normal. Dr. Scott testified that in his experience, back pain can result from a compression fracture. Rehabilitation tests revealed that plaintiff's initial range of motion in his back was thirty-three percent below average and his isometric strength was forty-seven percent below average. Dr. Scott attributed plaintiff's lower back pain to his failure to adequately rehabilitate his spine after the accident. However, Dr. Scott's August 9, 2002, report indicated plaintiff had increased his work capacity by twenty percent and his range of motion by six percent because of the physical therapy. At plaintiff's August 23, 2002, visit, Dr. Scott ordered another x-ray, which showed no change.

Dr. Scott testified that he considered plaintiff's compression fracture injury to be serious, but he could not predict what future problems plaintiff may experience. Dr. Scott opined that

plaintiff is at an increased risk for back pain and that any pain would affect plaintiff's leisure activities, but he could not determine whether plaintiff would actually suffer back pain.

At the close of plaintiff's case in chief, defendant moved for a directed verdict on the issues of negligence and serious impairment. The trial court denied the motion. Defendants presented the testimony of their medical expert. After conducting an examination of plaintiff on February 25, 2002, defendants' expert concluded that plaintiff had recovered well from a minor fracture, and had a normal range of motion appropriate for his age. At the conclusion of the proofs, the jury awarded plaintiff \$88,000 in noneconomic damages, minus damages caused by plaintiff's comparative negligence, and \$34,628.09 in attorney's fees and costs. The jury attributed seventy-five percent negligence to defendant Joshua Corbin, five percent negligence to defendant James Corbin and twenty percent negligence to plaintiff Austin. Judgment was entered on the verdict. This appeal ensued.

II. Standard of Review

This Court reviews the trial court's denial of a motion for directed verdict *de novo*. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). In reviewing the denial of a motion for directed verdict, the appellate court views the evidence presented up to the time of the motion and all legitimate inferences which could be drawn from the evidence in light most favorable to the non-moving party. *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 702; 644 NW2d 779 (2002). If reasonable jurors could have honestly reached different conclusions, then neither the trial court nor this Court should substitute its judgment for that of the jury. *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996), citing *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995). A directed verdict is proper only when no factual question exists on which reasonable jurors could differ, *Derbabian, supra* at 702, and is generally disfavored in a negligence case. *Latham v National Car Rental Systems, Inc*, 239 Mich App 330, 340; 608 NW2d 66 (2000); *Hunt, supra* at 99.

III. Analysis

Defendants contend that the trial court erred in denying their motion for directed because the evidence failed to show that plaintiff suffered a serious impairment of body function. We agree.

Under the no-fault act, MCL 500.3101 *et seq.*, a plaintiff who sustains injuries in a motor vehicle accident can recover damages for a noneconomic loss if the plaintiff can prove he suffered a "serious impairment of body function." MCL 500.3135(1). "Serious impairment of body function" contains the following components: an objectively manifested impairment, of an important body function, and that affects the person's general ability to lead his or her normal life." MCL 500.3135(7); *Kreiner v Fischer*, 471 Mich 109, 121; 683 NW2d 611 (2004).

The determination of whether a plaintiff suffered a serious impairment of a body function is to be decided as a matter of law by the court if either (1) there is no factual dispute regarding the nature and extent of the person's injuries or that the dispute is not material before deciding the issue as a matter of law; (2) whether an important body function has been impaired and that the impairment is objectively manifested; and (3) whether the plaintiff's general ability to lead

his or her normal life has been affected. *Kreiner, supra* at 130-134. At issue here is whether plaintiff's injury affected his general ability to lead his life.

"[D]etermining whether a plaintiff is "generally able" to lead his normal life requires considering whether the plaintiff is, "for the most part" able to lead his normal life." *Kreiner, supra* at 130. The Supreme Court further explained:

Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's "general ability" to lead his normal life has not been affected and he does not meet the "serious impairment of body function" threshold. [*Kreiner, supra* at 131].

In the present case, the evidence established plaintiff is generally able to lead his normal life. Plaintiff returned to work after two weeks, was attending school full-time after one month, and is enrolled in community college. Plaintiff was not forced to permanently reduce the hours of his workday, and instead continues to work full-time and, when available, overtime. Albeit with some discomfort, plaintiff is still able to participate in all leisure activities. Although evidence indicated plaintiff is unable to perform household chores, "[a] negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold." *Kreiner, supra* at 137. In sum, even when this evidence is viewed in a light most favorable to plaintiff, reasonable jurors could not honestly reach different conclusions regarding whether plaintiff's injury met the threshold requirement for serious impairment of body function. The trial court improperly denied defendants' motion for directed verdict.

In light of our resolution of this issue, we need not address defendants' remaining issues on appeal.

IV. Conclusion

Viewing the evidence presented in plaintiff's case in chief and all legitimate inferences drawn from that evidence in the light most favorable to plaintiff, defendants were entitled to a grant of a directed verdict because plaintiff failed to show that his injury constituted a serious impairment of body function. The trial court erred by denying defendants' motion.

Reversed and remanded for entry of judgment in favor of defendants. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter