

STATE OF MICHIGAN
COURT OF APPEALS

LISA MICHELLE PASCHAL,

Plaintiff-Appellant,

v

BRIAN KEITH MALONEY, JR.,

Defendant-Appellee.

UNPUBLISHED

October 27, 2005

No. 262607

Washtenaw Circuit Court

LC No. 03-001299-NI

Before: Gage, P.J., and Hoekstra, and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant and later order denying plaintiff's motion for reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On August 15, 2002, plaintiff and defendant were in an automobile accident in Ypsilanti. Defendant hit plaintiff's vehicle from behind, and pushed her vehicle into the vehicle in front of her. Medical tests indicated that plaintiff had a disc bulge at C5-C6 and to a lesser extent at C4-C5 and C6-C7. A consultation report from a pain institute also noted pain secondary to the automobile accident primarily in the left distribution of C7 and in the left leg and in the distribution of L4. Plaintiff was on medical leave for approximately 45 days after the accident, and was able to return to work on September 30, 2002. The doctor's report allowing her to return to work indicated she was much improved and would return to work on September 30, 2002 using Motrin as needed for the neck and back pain.

Plaintiff received physical therapy shortly after the accident and her therapist noted that as of September 30, 2002 plaintiff had increased tolerance for sitting, no change of pain but she was doing okay, decreased range of motion, and improved spine alignment. The therapist also noted that plaintiff was progressing toward the goals as of September 30, 2002. After September 30, 2002, there were no medical work restrictions in plaintiff's medical file. Plaintiff testified that she was unable to sit through her children's sporting events due to the pain, and she could no longer volunteer at the football concession stand. Plaintiff also testified that her husband divorced her after the accident because she was unable to maintain a physical relationship with him due to the pain.

A trial court's grant or denial of summary disposition is reviewed de novo. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Questions of statutory interpretation are

also reviewed de novo. *Id.* In ruling on a motion for summary disposition, a trial court only reviews the evidence before it. *Maiden v Rozwood*, 461 Mich 109, 127 n 9; 597 NW2d 817 (1999). Similarly, this Court’s review of a trial court’s summary disposition decision is limited to the evidence that was before the trial court at the time of its decision. *Id.* In this case plaintiff’s brief on appeal included multiple disability letters and other evidence that was not before the trial court on the day the motion for summary disposition was heard. Those supplemental pieces of evidence were dated either the day of the hearing or later. Accordingly, those supplements to the record will not be considered on appeal.

Under Michigan’s no-fault insurance act an injured person’s ability to sue a third party for noneconomic damages is significantly limited. *Kreiner, supra*, 115. MCL 500.3135(1) states that a third party will remain subject to tort liability for noneconomic loss if the injured person “has suffered death, serious impairment of body function, or permanent serious disfigurement.” The statute also explains that “‘serious impairment of body function’ means 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).

The Michigan Supreme Court has set forth a multi-step process for determining when a plaintiff meets the statutory threshold of being able to maintain a claim against a third party for noneconomic damages in an automobile accident. See *Kreiner, supra*, 131-133. In this case there is no dispute that an important body function had been impaired and that impairment was objectively manifested. The only issue in this appeal concerns whether plaintiff’s impairment affects her general ability to lead her normal life. To determine whether an impairment affects plaintiff’s general ability to lead her normal life “a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Kreiner, supra*, 132-133. Merely “any effect” will not be objectively viewed as affecting the plaintiff’s general ability to lead her life. *Id.* (emphasis in original). Factors to consider in making this inquiry include “(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery.” *Id.*, 133 (footnotes omitted).

A summary of the evidence before the trial court shows that plaintiff was able to fully return to work, albeit with pain but without medical restriction, 45 days after the accident. Her doctor indicated she was doing well, and the initial physical therapy notes indicated progress and improvement. There were no continued medical restrictions concerning her work, and there were no indications that plaintiff’s ability to perform daily required routines such as dressing and bathing were impaired. Plaintiff’s largest complaint concerning the effect on her life appears to be testimony that she cannot sit through an entire sporting event of her children or work at the concession stand as she did prior to the accident. When comparing plaintiff’s life before and after the accident and the significance of the affected aspects of her life, the trial court properly granted defendant’s motion for summary disposition.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray