

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH JANES,

Plaintiff-Appellant,

v

BRYAN DOUGLAS MOSS,

Defendant-Appellee,

and

CHERIE COLBURN,

Defendant.

UNPUBLISHED

May 16, 2006

No. 258619

Kent Circuit Court

LC No. 02-004110-NI

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

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition. Plaintiff also challenges the court's decision to grant defendant's motion to set aside a default. We affirm.

Plaintiff, a hair loss technician, and defendant were involved in an automobile accident during which plaintiff broke her left middle finger. A default was entered against defendant after defendant failed to answer the complaint in a timely manner. After finding that defendant had a reasonable excuse for failing to answer and had asserted a meritorious defense, the trial court set aside the default. Subsequently, the trial court granted summary judgment to defendant on the basis that plaintiff had not suffered a serious impairment of body function.

Plaintiff first contends that the circuit court erred in granting defendant's motion to set aside the default. We disagree.

This Court reviews a trial court's decision to set a side a default for an abuse of discretion. See *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003). Absent a lack of jurisdiction, a motion to set aside a default "shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D)(1). A party establishes good cause either by showing (1) a procedural irregularity or defect or (2) a reasonable excuse for not complying with the requirements upon

which the default is based. *Barclay v Crown Building & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000).

The strength of the defense asserted affects the good cause showing that is required from the party in default. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999). “[I]f a party states a meritorious defense that would be absolute if proven, a lesser showing of ‘good cause’ will be required than if the defense were weaker, in order to prevent manifest injustice.” *Id.* at 233-234.

Defendant asserted the defense that plaintiff had not suffered a serious impairment of body function. If proven, this defense is absolute. Under the no-fault act, a person may not recover for noneconomic damages arising from an automobile accident unless the person has suffered death, a permanent serious disfigurement, or a serious impairment of body function. MCL 500.3135(1). Because defendant has presented an absolute defense, the good cause showing defendant is required to make is lessened.

The record demonstrates the following: Defendant attempted, albeit unsuccessfully, to contact his insurance agent before the answer was due and he eventually faxed the summons and complaint to the insurance company; the insurance company contacted plaintiff’s counsel the business day after the default was entered; the insurance company immediately forwarded the complaint and summons to defense counsel after learning the default had been entered; and defense counsel immediately contacted plaintiff’s counsel after receiving the summons and complaint. We conclude that defendant did not make a particularly *strong* showing of good cause, but he did establish some basis for the delay. More importantly, any weakness in defendant’s showing of good cause was offset by his defense of plaintiff’s lack of serious impairment; this defense was very strong. We simply cannot conclude that the trial court abused its discretion in setting aside the default.

Plaintiff contends that the trial court erred in granting summary judgment to defendant under MCR 2.116(C)(10), on the basis that plaintiff had not suffered a serious impairment of body function. We disagree.

This Court reviews de novo a trial court’s decision with regard to a motion for summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and documentary evidence presented, viewed in the light most favorable to the non-moving party, show that there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Under the no-fault act, an injured person may recover for noneconomic loss only if he or she 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). In determining whether a plaintiff has suffered a serious impairment of body function, a court must “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 v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). The court must then engage in an

objective analysis to determine whether the difference between the plaintiff's pre- and post-accident lifestyle has affected the plaintiff's "general ability" to lead the course of his or her life. *Id.* at 133.

Four days after the accident, which occurred in January 2002, plaintiff underwent surgery to repair her broken finger. Following the surgery, plaintiff had to wear a splint on her left hand for about a month and a bandage around her left middle finger. By the summer of 2002, Janes was wearing nothing around her finger. Plaintiff went to physical therapy twice a week for a couple of months. Since the physical therapy has ended, plaintiff has not received any further treatment on her finger. X-rays taken of plaintiff's finger approximately a month and a half after the surgery revealed that plaintiff's finger was well healed. Plaintiff can extend her left middle finger without pain, but she cannot make a fist because the finger does not want to bend. Plaintiff occasionally experiences soreness in her finger, which she attributes to cold weather.

While she was wearing the splint and bandage, plaintiff was unable button her pants or bra, wash her hair, do laundry, drive a car, or cook. However, now that plaintiff does not wear either the splint or the bandage, she is able to do all these activities.

Plaintiff also missed six weeks of work after the accident. Plaintiff returned to work without any doctor restrictions. While she worked full-time before the accident, plaintiff now only works part-time. However, contrary to plaintiff's assertion, this reduction in hours was not due to her injury. Plaintiff only worked thirty hours a week when she returned to her job because her employer had hired a replacement, and this replacement continued to work for a month after plaintiff returned. However, when this replacement quit, plaintiff continued to work only thirty hours a week because business was slow. Plaintiff's hours were further reduced to twenty hours a week as her employer continued to lose clients and money. Our conclusion that plaintiff's failure to work full-time is not related to her injury is bolstered by the following two facts: (1) plaintiff worked at another hair salon part-time when her hours were reduced to twenty a week; and (2) plaintiff testified that she is able to do the same job duties she did before the accident except give short haircuts. Furthermore, because plaintiff can use an electric clippers to give a short haircut, plaintiff's inability to give a short haircut is only a problem when the client asks for a finger cut.

Plaintiff's injury to her left middle finger was not extensive. Her recuperation was short and unremarkable and is virtually complete. Any remaining effects of plaintiff's broken finger on her ability to use either her left middle finger or her left hand are not pervasive. Given the limited nature and extent of plaintiff's injury, we agree with the trial court that plaintiff did not suffer a serious impairment of body function.

Affirmed.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey