

STATE OF MICHIGAN
COURT OF APPEALS

JEANNE CATES and WILLIAM BATES, II,

Plaintiffs-Appellants,

v

ANGELETTE MARIA MOORE MELHADO,

Defendant-Appellant.

UNPUBLISHED

October 3, 2006

No. 264557

Wayne Circuit Court

LC No. 04-424233-NI

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiffs¹ appeal as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On August 22, 2001, a car driven by William Bates and in which Cates was riding, was struck from the rear by a car driven by defendant. Cates presented to the emergency room, and was diagnosed with cervical strain and a contusion on her left knee. She was given a prescription for pain medication and released.

From August 31, 2001, through February 2002, Cates treated with her family physician and a physical medicine and rehabilitation specialist for back pain. Cates underwent physical therapy, and showed some improvement.

Cates did not seek further treatment for back pain until June 2003.² At that time, she consulted Dr. Laban, a physical medicine and rehabilitation specialist. He indicated that x-rays and an MRI revealed a disc herniation at L4 and degenerative disc disease. In June 2004, Dr. Laban prescribed a TENS unit, and indicated that further treatment options were limited.

¹ Plaintiffs are husband and wife. The claims raised by William Bates are derivative of those raised by Jeanne Cates.

² During the period from February 2002 until June 2003, Cates underwent treatment for a number of conditions that were not related to the accident.

Plaintiffs filed suit alleging that the injuries Cates suffered in the accident constituted a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that Cates' injuries did not meet the threshold requirement for a serious impairment of body function. Defendant asserted that Cates suffered only soft tissue injuries, and that those injuries had not affected her general ability to lead her normal life.

In response, plaintiffs emphasized that tests ordered by Dr. Laban revealed injuries to Cates' spine. Moreover, plaintiffs noted that Cates stated in her deposition that she was off work intermittently after the accident. Cates stated that as a result of the accident she could no longer engage in activities such as playing with her two-year-old grandchild, dancing, or bowling. She indicated that she and her husband did not engage in intimate relations as a result of the accident. Bates indicated that while he and his wife still traveled, he had to make arrangements to ensure that a wheelchair would be available if his wife needed it, and that he always noted the location of the nearest pharmacy in case his wife needed more medication.

The trial court granted defendant's motion for summary disposition. The trial court found that the medical evidence did not establish that a serious impairment was objectively manifested, and that no evidence showed that the trajectory of Cates' life had been significantly affected by the accident.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A serious impairment of body function is "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). For an impairment to be objectively manifested, there must be a medically identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). Whether a person has suffered a 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 injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a). Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course of the person's life. The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. The court must examine the plaintiff's life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff's life. In order to determine whether the plaintiff's general ability to lead his or her normal life has been affected by the objective impairment, the court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Kreiner v Fischer*, 471 Mich 109, 131-134; 683 NW2d 611 (2004).

We affirm. Tests performed shortly after the accident showed only soft tissue injuries; however, x-rays and an MRI performed in 2003 showed the existence of a herniated disc and degenerative disc disease. A herniated disc is an objectively manifested injury. *Jackson, supra*.

The ability to use the back is an important body function. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986).

Even assuming arguendo that Cates' herniated disc is attributable to the accident, the evidence did not create a question of fact whether the accident resulted in injuries that affected Cates' general ability to lead her normal life. Cates missed work from time to time after the accident, but was not off work for any extended period. She was able to sit or stand as needed while on the job. Cates and her husband continued to travel after the accident, notwithstanding the fact that Cates was required to use a wheelchair on occasion. Cates testified that she could not participate in various activities following the accident; however, no evidence showed that any physician restricted Cates' activities. Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish the existence of a residual impairment. *Kreiner, supra* at 133 n 17. Self-imposed restrictions based on something other than pain, such as physical incapacity, may establish the existence of a serious impairment of body function. *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005). No evidence showed that Cates' restrictions were anything other than self-imposed limitations based on real or perceived pain.

Cates' injuries did not exceed those suffered by the plaintiff Straub in the companion case to *Kreiner, supra*, or by the plaintiff Kreiner himself. Those injuries were found not to constitute serious impairments of body function. *Kreiner, supra* at 122-127, 135-136. The trial court did not err by determining that the issue of whether Cates suffered a serious impairment of body function was a question of law under the circumstances, MCL 500.3135(2)(a), and did not err by granting summary disposition in favor of defendant.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen