

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE ISBELL,

Plaintiff-Appellant,

v

ROBERT HAIGHT and SUSAN HAIGHT,

Defendants-Appellees.

UNPUBLISHED

January 16, 2007

No. 269249

Kent Circuit Court

LC No. 05-002208-NI

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

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendants on plaintiff's claim alleging that she suffered serious impairment of body function when defendants' car, driven by defendant Robert Haight, rear-ended plaintiff's car. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The accident occurred on April 24, 2003. Immediately following the accident, plaintiff complained of neck, back, and shoulder pain, but she was not examined until the next day. She received physical therapy. After plaintiff continued to complain of low back pain, she was referred to an orthopedist, Dr. Patrick Ronan, M.D., who found a left lateral annular tear with disk protrusion at L3-L4, a left lateral disk protrusion at L4-L5, degenerative disc disease at both levels, and arthrosis at L5-S1. Dr. Ronan prescribed additional therapy and exercise.

Plaintiff continued to complain of lower back pain. In April 2004, plaintiff was referred to a pain specialist, Dr. Daniel Mankoff, M.D., who restricted plaintiff's bending, twisting, and lifting, administered pain reliever injections, later performed facet rhizotomies, and, after plaintiff continued to complain of pain, obtained a diagnostic discogram that reflected an annular tear and degenerative changes at L3-L4 and L4-L5 with concordant pain at L3-L4. Eighteen months after the accident, on October 26, 2004, Dr. Mankoff advised an insurance carrier that:

[Plaintiff] is significantly limited in her ability to function. Minimal activities cause fairly severe low back pain. As such, I do not think that she is even capable of a light duty position. She cannot stay in any one position for prolonged periods of time. Therefore, she cannot sit, stand, bend, twist, or lift. If I were to give her restrictions, this would be a 5-10# lifting restriction with no prolonged sitting,

standing, bending, or twisting. She is not able to climb stairs or ladders. There should be no repetitive motion of the lumbar spine.

Finally, on January 3, 2005, Dr. Mankoff performed an IDET¹ and fitted plaintiff with a low back brace for six weeks. Dr. Mankoff determined plaintiff to be completely incapacitated from employment from December 8, 2004 to February 2, 2005, and permitted her to return to work on April 1, 2005 with restrictions of no lifting more than 10 pounds, only limited bending, twisting, and squatting, and no repetitive motion.

On May 17, 2005, plaintiff began treating with Dr. Todd Brown, M.D., an orthopedic surgeon. Dr. Brown determined that plaintiff required lumbar surgery. On September 16, 2005, he performed an anterior lumbar discectomy at L4-L5 and inserted a cage to facilitate natural fusion by bone growth. Plaintiff was placed in a lumbar brace, which limited her ability to sit, lift, bend, pull, and work. Plaintiff remained in the brace for three months and then began weaning herself off the brace in December 2005. She was scheduled to begin her fourth course of physical therapy and was restricted from working. The surgery left a vertical scar from her pelvis to her abdomen.

Before the accident, plaintiff worked full time at a radio station for several years and then at a real estate office. In addition to working full time, plaintiff performed typical household duties, volunteered at her church, taught Sunday school, participated in the parent-teacher organization, was a room mother for her children's classes and a Girl Scout troop leader, and worked out at "the Y" where she swam and lifted weights. About four weeks before the accident, plaintiff was laid off because of a business reorganization. Between the time of the layoff and accident, plaintiff sent out a number of resumes and had been interviewed for some positions. After the accident, but before the discectomy, she was able to do light housekeeping, laundry, run errands and shop, although she had other people lift the heavy items, such as groceries and laundry baskets. Plaintiff no longer volunteered at her church, taught Sunday school, was a Girl Scout troop leader, participated as a "room mom" at her children's school, or worked on the Christmas play because she could not be relied on if she felt that the pain was too great. While recovering from her discectomy, plaintiff was unable to do any household chores or errands because of restrictions on lifting and bending and needed help getting dressed. Plaintiff did not return to work because of the pain in her lower back but intends to do so when it heals from the discectomy. When plaintiff's deposition was taken about three weeks after the discectomy, she testified that she still had pain but was hopeful that the next round of physical therapy would be successful and she would be able to return to work.

Defendants moved for summary disposition on plaintiff's claims for negligence against defendant Robert Haight and owner's liability against Susan Haight. The circuit court granted the motion, holding that there was no factual dispute regarding the nature and extent of plaintiff's injuries and that plaintiff's injuries did not affect her ability to lead her normal life. On appeal,

¹ According to the website of the American Academy of Orthopedic Surgeons, IDET refers to intradiscal electrothermal therapy, which is a procedure that applies high heat directly to the inside of the disc. See <http://orthoinfo.aaos.org>.

plaintiff argues that her injuries rise to the level of a serious impairment of body function that affect her general ability to lead her normal life as a matter of law because her injuries resulted in three years of medical treatment, months of total disability, and ongoing medical restrictions limiting her ability to care for herself, to work, to interact with her children, to perform household chores, and to engage in social and recreational activities. We agree.

This Court reviews the circuit court's grant of a motion for summary disposition *de novo*. *Carmacks Collision, Inc v Detroit*, 262 Mich App 207, 209; 684 NW2d 910 (2004). Under the no fault act, MCL 500.3101 *et seq.*, a person is subject to tort liability for noneconomic loss caused by his ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(7); *Kreiner v Fischer*, 471 Mich 109, 120-121; 683 NW2d 611 (2004). 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). Our Supreme Court articulated the following approach:

In determining whether the course of the plaintiff's normal life has been affected, 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. Once this is identified, the court must engage in an objective analysis regarding whether any difference between the plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's "general ability" to conduct the course of his life. Merely "any effect" on the plaintiff's life is insufficient because a *de minimis* effect would not, as objectively viewed, affect the plaintiff's "general ability" to lead his life.

The following nonexhaustive list of objective factors may be of assistance in evaluating whether the plaintiff's "general ability" to conduct the course of his normal life has been affected: (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. This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves. For example, that the duration of the impairment is short does not necessarily preclude a finding of a "serious impairment of body function." On the other hand, that the duration of the impairment is long does not necessarily mandate a finding of a "serious impairment of body function." Instead, in order to determine whether one has suffered a "serious impairment of body function," the totality of the circumstances must be considered, and the ultimate question that must be answered is whether the impairment "affects the person's general ability to conduct the course of his or her normal life." *Kreiner, supra* at 132-133 (emphasis in original.)

Here, the record indicates that for the first year plaintiff received conservative treatment for her back. She was able to perform some of the activities that she engaged in before the accident. When the conservative medical treatment did not alleviate plaintiff's condition, she began treating with the pain specialist who restricted her with regard to twisting, bending, and lifting for about three months. She was able to perform some of her former activities while

restricted but as to employment, was not “even capable of a light duty position,” according to Dr. Mankoff. After plaintiff’s discectomy, plaintiff was not generally able to perform her former activities while she was recovering because she was fitted with a back brace, and she was again restricted with regard to bending, twisting, and lifting for three months. During plaintiff’s deposition, which occurred within a few weeks of the discectomy, plaintiff indicated that even though it had only been a short time since the surgery, she felt she was getting stronger and was to start her fourth course of physical therapy. However, because she had not yet had her follow-up appointment with her surgeon, the record does not contain any information on her prognosis for eventual recovery.

Based on the record, plaintiff has shown that she had an objectively manifested medical injury to an important body function and that she experienced repetitive restrictions over the course of her three year medical treatment. Moreover, plaintiff has shown that her injuries forced her to change the course of her life after the accident. Thus, we conclude that plaintiff has shown that the “course and trajectory” of her normal life has been affected. The trial court erred in granting summary disposition to defendants.²

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Kirsten Frank Kelly

² Because of our resolution of this issue, we do not address plaintiff additional argument.