

STATE OF MICHIGAN
COURT OF APPEALS

SHERITA JONES,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION,

Defendant,

and

AMY MARIE WILSON,

Defendant-Appellee.

UNPUBLISHED

April 17, 2007

No. 272640

Oakland Circuit Court

LC No. 2005-068715-NF

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Wilson's motion for summary disposition in this automobile negligence action. We reverse and remand. This appeal is being decided without oral argument under MCR 7.214(E).

I. FACTS

On October 8, 2004, plaintiff was riding a SMART bus when defendant, who had been smoking marihuana, ran a red light and collided with the bus. Two days later, plaintiff went to the emergency room for treatment of lower back and shoulder pain, treated with prescription pain medication. Plaintiff saw another doctor who prescribed more pain medication and a muscle relaxant. Even though her doctor cleared her to go back to work after ten days, plaintiff did not return to work. In January 2005, plaintiff reported to her doctor that she still had pain, but was somewhat improved and was able to perform activities of daily living. Plaintiff did not attend the recommended physical therapy sessions for financial reasons. In May 2005, plaintiff began reporting difficulty with prolonged standing and repetitive bending. Her doctors disagreed regarding whether plaintiff could return to work. Plaintiff was again prescribed physical therapy, but she did not attend.

Plaintiff saw a chiropractor who advised plaintiff to refrain from labor “which would require lifting, bending, stooping, prolonged standing or sitting.” Both the chiropractor and a pain management specialist referred to plaintiff by her attorney indicated that she had muscle spasms and limited range of motion in the neck and back. Plaintiff testified that before the accident, she went out dancing at night, skating once a month, shopping at the mall every week, as well as other sporadic physical activities.

Defendant moved for summary judgment, arguing that plaintiff did not have an objectively manifested injury because the only tests that revealed abnormal results were conducted more than a year after the accident by a doctor hired by plaintiff’s attorney. Her doctor did not restrict her daily activities. The court granted defendant’s motion, concluding that plaintiff had alleged and documented an injury to an important body function, but that plaintiff’s injuries did not affect her general ability to lead her normal life.

II. STANDARD OF REVIEW

The trial court’s ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. MCR 2.116(G)(5); *Kefgen, supra* at 616. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

III. ANALYSIS

A person is subject to tort liability for automobile negligence if the injured person “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 *Kreiner v Fischer*, 471 Mich 109, 131; 683 NW2d 611 (2004), our Supreme Court established a “multi-step process . . . to provide the lower courts with a basic framework for separating out those plaintiffs who meet the statutory threshold from those who do not.” The first three steps do not appear to be in dispute. The parties do not dispute that the court could rule on the issue as a matter of law. Further, the trial court found that there was evidence of an objectively manifested injury and that the injury impaired an important body function.

If an important body function has been impaired and the impairment is objectively manifested, the next question is whether the impairment affected the plaintiff’s general ability to lead her normal life. *Id.* at 132. In answering this question, the court is to compare the plaintiff’s life before and after the accident and consider “the significance of any affected aspects on the course of plaintiff’s overall life.” *Id.* at 132-133. Factors to consider 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.* at 133.

The nature of the impairment consists of both back and neck pain. Plaintiff has had minimal treatment consisting primarily of the prescription of medication. The impairment has not been resolved, resulting in plaintiff being medically restricted from returning to work for 17 months and, according to one doctor, plaintiff’s prognosis for recovery is poor. While the limitations on plaintiff’s social activities appear to be self-imposed, another doctor advised against lifting, bending, stooping, and prolonged sitting or standing. We conclude that such evidence was sufficient to create an issue of fact as to whether plaintiff’s injury affected her general ability to lead her normal life. Therefore, the trial court erred in granting defendant’s motion.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette