STATE OF MICHIGAN

COURT OF APPEALS

ANGELA MARIE SORANNO, Plaintiff-Appellee,	UNPUBLISHED May 19, 2011
V	No. 296517 Wayne Circuit Court
NORMA HASSAN ABBAS, SOBHI H. ABBAS and MOBIL GAS STN GREENFIELD & TEN MILE, INC., Defendants-Appellants.	LC No. 07-730107-NI

Before: CAVANAGH, P.J., and TALBOT and STEPHENS, JJ.

PER CURIAM.

Defendants appeal as of right a final judgment awarding plaintiff work loss benefits pursuant to the jury's verdict. We affirm in part and vacate in part.

Defendants assert on appeal that the trial court erred in submitting plaintiff's claim for excess work loss benefits to the jury because plaintiff failed to provide specific evidence to support her claim. We agree. We review de novo a trial court's ruling on a motion for judgment notwithstanding the verdict. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003).

The no-fault act allows a seriously injured person to recover work loss damages in tort arising from the ownership, use or maintenance of a motor vehicle. See MCL 500.3135(3)(c); see also MCL 500.3107(1)(b). "[W]ork loss" is defined as "income [which the injured party] would have received *but for* the accident." *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 645; 513 NW2d 799 (1994) (quoting *MacDonald v State Farm Ins Co*, 419 Mich 146, 152; 350 NW2d 233 (1984) (emphasis original)); see also MCL 500.3107(1)(b).

It is well established that a claim for loss of earning capacity is not recoverable under the no-fault act. *Marquis*, 444 Mich at 647; see also *Ouellette v Kenealy*, 424 Mich 83, 87-88; 378 NW2d 470 (1985). Lost earning capacity is what an injured party *could* have earned but for the accident, whereas work loss is what an injured party *would* have earned but for the accident. *Marquis*, 444 Mich at 638. The issue, in the present case, is whether an unemployed college student is eligible for work loss benefits if she does not provide specific evidence that she would have completed a four year degree and would have secured employment utilizing that degree but for the accident. The case law requires an unemployed student to provide specific evidence of

how much money she would have made in order to be eligible for work loss damages. That is, the evidence provided by a plaintiff must be specific enough to calculate loss based on actual earnings not future possibilities or expected earnings.

Relying on *Swartout v State Farm Mutual Automobile Ins Co*, 156 Mich App 350; 401 NW2d 364 (1986), defendants assert that plaintiff was required to present concrete evidence to show that she would have completed a four year degree and evidence of the source of her employment after completing the degree. In *Swartout*, the Court upheld a claim for work loss damages by an unemployed nursing student whose injuries caused her to graduate a year late but who submitted proof of an offer of employment from a specific hospital, including her starting date and salary. *Id.* at 354.

The plaintiff in *Swartout* was a nursing student who expected to graduate in June 1981. *Swartout*, 156 Mich App at 352. In April 1981, she was injured in an automobile accident. *Id.* The plaintiff was unable to complete the semester, but returned to school the next year and graduated in June 1982. *Id.* To support her claim for work loss benefits under former MCL 500.3107(b), now MCL 500.3107(1)(b), she presented an affidavit from the school stating that she would have graduated in June 1981. *Id.* More significantly, she presented an affidavit from a hospital stating that she would have been employed no later than July 27, 1981, if she had received her degree by that time, while also specifying the rate of pay. *Id.* The *Swartout* Court concluded that it was "a question for the trier of fact to determine whether plaintiff would have received income through employment as a nurse during any of the time she lost as a result of the accident." *Id.* at 353. The Court further stated:

> [P]laintiff in the instant case has alleged facts, which, if believed, would establish the source of her employment and the exact wages that would have been received between July 1981 and June 1982. In other words, plaintiff has stated a claim for wages that would, rather than could, have been earned but for injuries. [*Id.* at 354.]

In *Gerardi v Buckeye Union Ins Co*, 89 Mich App 90; 279 NW2d 588 (1979), the Court denied work loss benefits to a nursing student who had no proof of a specific job offer, starting date, or promised salary. In *Gerardi*, the plaintiff was a full-time nursing student when she was injured in an automobile accident. *Id*. at 92. The injuries suffered by the plaintiff caused her to delay her studies, prompting her to file an action against her no-fault insurer for income lost as a result of the delay. *Id.* This Court rejected the plaintiff's claim on the ground that the plaintiff was seeking "a loss of wages she could have earned in the future as a registered nurse, but for the delay in her studies," which loss was characterized as a loss of earning capacity. *Id*. at 95. In reaching its decision, the Court in *Gerardi* reasoned:

> At the time of her injury the plaintiff still had one year remaining before completion of her nursing studies. Obviously, plaintiff would not have been able to work as a registered nurse prior to her accident; she thus has no previous earnings as a nurse upon which work loss may be calculated. Neither can plaintiff demonstrate that during the year lost as a result of the accident, she would have received income working as a registered nurse. Presumably, plaintiff would have spent that year completing the necessary academic requirements. [*Id*. at 95.]

Under *Swartout* and *Gerardi*, an unemployed college student seeking work loss benefits must provide specific evidence of wages that would, rather than could, have been earned but for the injuries. Unlike the plaintiff in *Swartout*, plaintiff here has not established the source of her employment, the date of her employment, or her exact wage. Plaintiff did present evidence from Dr. Sobota that it is more likely than not that, but for the accident, she would have successfully completed college. She also presented evidence that, statistically, it is more likely than not that, but for the accident, she would have earned income over her lifetime at least in the average range for a female college graduate with an average life expectancy. However, such general proofs were rejected by this Court in *Gerardi* and found not to support a claim for work loss benefits. Based on this Court's analyses and rationales in both *Swartout* and *Gerardi*, we hold that plaintiff was required to present specific evidence that she would have completed her degree and evidence of the source of her employment postgraduation, including date of employment and wage. Plaintiff failed to provide such evidence, and thus, failed to establish a viable claim for work loss benefits.

We affirm in part, but vacate the trial court's judgment awarding plaintiff work loss damages.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/Cynthia Diane Stephens