

Court of Appeals, State of Michigan

ORDER

SHIRLEY SPENCER v MARCUS WEAVER

Docket No. 260226

LC No. 03-327210-NI

Jessica R. Cooper
Presiding Judge

Karen Fort Hood

Roman S. Gribbs*
Judges

On the Court's own motion, the July 12, 2005 opinion is hereby VACATED. A new opinion is attached.

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 26 2005

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

SHIRLEY SPENCER and SAMMY SPENCER,

Plaintiffs-Appellants,

v

MARCUS DAVID WEAVER, DEBRA
WEAVER, KELSI EMPLOYEE LEASING INC,
and QUALITY COMMUNICATIONS,

Defendants-Appellees.

UNPUBLISHED

July 26, 2005

No. 260226

Wayne Circuit Court

LC No. 03-327210-NI

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiffs brought an action against defendants for recovery of noneconomic loss benefits under the no-fault statute. MCL 500.3135. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs appeal as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Shirley Spencer, a fifty-one-year-old housewife, was injured on August 27, 2002.¹ She was riding a bicycle on the side of the road when she was struck in the right ankle by a ladder that had fallen from a passing truck. Plaintiff then fell from her bicycle. As a result of the accident, plaintiff suffered a laceration and a fracture to her right ankle. She initially used crutches to walk, but was able to discontinue their use within two months. Approximately one year after the accident, plaintiff reported that her ankle swelled when she did "a lot of walking," but otherwise she suffered no long-term effects from the injury to her ankle.

Plaintiff also maintained that she injured her lower back in the accident.² She obtained help with all of her household chores for approximately one month after the accident. Initially,

¹ Plaintiff Sammy Spencer's claim is a derivative one for loss of consortium. Accordingly, for ease of reference, we refer to plaintiff Shirley Spencer as plaintiff.

² Plaintiff was involved in an automobile accident in December 2000. She suffered back injuries from that accident, but it appears that she had fully recovered from that injury by July 10, 2002.

* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

she could not vacuum, sweep, or mop; however, she had resumed all of those activities by July 2003. Sixteen months following the accident, plaintiff could exercise freely, but could not perform jumping jacks or sit-ups. In addition, she had resumed bowling and riding her bicycle. At that time she estimated her recovery at 95%.

Plaintiff filed suit asserting that her injuries constituted a serious impairment of body function. The trial court found that plaintiff had failed to present sufficient evidence that the injuries affected her general ability to lead her normal life, and granted summary disposition to defendants.

We review a trial court's decision on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Pursuant to MCL 500.3135, a person is subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. "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).

We are bound by the dictates of *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), wherein the Michigan Supreme Court provided a framework for determining whether a plaintiff meets the serious impairment threshold. First, a court is to determine whether a factual dispute exists "concerning the nature and extent of the person's injuries; or if there is a factual dispute, that it is not material to the determination whether the person has suffered a serious impairment of body function." *Id.* at 131-132. If there are material factual disputes, a court may not decide the issue as a matter of law. If no material question of fact exists regarding the nature and extent of the plaintiff's injuries, this question is one of law. *Id.* at 132.

When a court decides the issue as a matter of law, it must then proceed to the second step in the analysis and determine whether "an 'important body function' of the plaintiff has been impaired." *Id.* When a court finds an objectively manifested impairment of an important body function, "it then must determine if the impairment affects the plaintiff's general ability to lead his or her normal life." *Id.* This involves an examination of the plaintiff's life before and after the accident. The court should objectively determine whether any change in lifestyle "has actually affected the plaintiff's 'general ability' to conduct the course of his life." *Id.* at 132-133. "Merely 'any effect' on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his life." *Id.* at 133. The *Kreiner* Court provided a non-exclusive list of objective factors that may be used in making this determination. These factors 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.*

Specifically in regard to residual impairments, the *Kreiner* court noted, "Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point." *Id.* at 133 n 17.

In the instant case, objective medical evidence established that plaintiff suffered multiple injuries from the accident. These injuries arguably affected several of plaintiff's important body functions. However, even taking as true plaintiff's assertions about the changes to her life due to these injuries, she has failed to show that the injuries have affected her general ability to lead her normal life. *Kreiner, supra*. Plaintiff's continued limitations do not rise to the level of having any perceptible effect on her usual activities. Consequently, we find that, even when plaintiff's ankle and back injuries are taken together, plaintiff has not satisfied the "serious impairment of body function" threshold for the recovery of noneconomic damages set forth in MCL 500.3135.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs