STATE OF MICHIGAN

COURT OF APPEALS

CAROL COLLER,

Plaintiff-Appellee,

v

MICHELLE CHENAIL,

Defendant-Appellant.

UNPUBLISHED
June 2, 2000

No. 209003
Marquette Circuit Court
LC No. 95-030733 NI

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

In this automobile negligence action, after a jury returned a verdict of no cause of action, the trial court granted plaintiff's motion for judgment notwithstanding the verdict and a new trial on the issue of damages. Defendant appeals by leave granted, and we reverse.

Under the no-fault automobile insurance act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*, a person injured as a result of a motor vehicle accident may not recover in tort for noneconomic losses unless the injured party has suffered death, serious impairment of a body function, or permanent serious disfigurement. MCL 500.3135(1); MSA 24.13135(1); *Stephens v Dixon*, 449 Mich 531, 539; 536 NW2d 755 (1995). For cases filed prior to July 26, 1996, as was this case, the question of whether plaintiff met the threshold injury requirement is generally one for the jury. See *DiFranco v Pickard*, 427 Mich 32, 58; 398 NW2d 896 (1986). Whether a plaintiff has met the serious impairment of a body function threshold depends on two inquiries: (1) what body function, if any, was impaired as a result of the motor vehicle collision; and (2) was the impairment serious? *DiFranco*, *supra* at 67. The focus of these inquiries is on how the injury affected a particular body function. *Id.* In determining whether an impairment of body function was serious, the factfinder should consider the extent of the impairment, the particular body function impaired, the length of time of the impairment, the treatment required to correct the impairment, and any other relevant factors. *Id.* at 69-70.

As the trial court correctly noted, the evidence in this case established that when plaintiff began seeing neuropsychologist Julienne Kirkham, Ph.D., in May 1994, she had an overall IQ score of 95. Two years after completing a traumatic brain injury program, plaintiff's score was 108. Based on this evidence, the trial court concluded that plaintiff suffered a traumatic brain injury that amounted to a

serious impairment of body function. However, the evidence also showed that plaintiff did not begin seeing Dr. Kirkham, and thus did not have her IQ initially tested, until two years after the accident. Dr. Kirkham further testified that a variety of external factors can affect how a person performs on neurological tests such as IQ tests. There was no evidence of plaintiff's IQ prior to the accident. However, defendant did present evidence that demonstrated plaintiff's poor performance in high school and college courses prior to the accident. Therefore, viewing the reasonable inferences of this evidence in a light most favorable to defendant, a reasonable juror could have concluded that the initial IQ score of 95 was not an accurate point of reference from which to measure any effects of the accident on plaintiff's brain function. Moreover, a logical and reasonable inference from this evidence may also have been that plaintiff's low average 95 score on the initial IQ test was not attributable to the accident, but was simply a reflection of plaintiff's abilities irrespective of the accident.

The evidence also included the results of twenty-two tests neuropsychologist Charles Barnes, Ph.D., performed on plaintiff and the results of nineteen tests Dr. Kirkham performed. Many of these tests contained subparts. Dr. Kirkham testified that it is inappropriate to focus on one of many tests in a neurological examination in attempting to diagnose a brain injury. Dr. Barnes corroborated this testimony. Based on his overall examination of plaintiff, Dr. Barnes concluded that plaintiff was not suffering from neuropsychological difficulties at the time he tested her. Dr. Barnes also testified that the results of plaintiff's tests did not conclusively establish that plaintiff had suffered neurological problems. Although Dr. Kirkham disagreed with Dr. Barnes' conclusions, she admitted that neuropsychology is an inexact science and that disagreements exist among neuropsychologists with respect to the subjective interpretations of test results.

Lastly, while the body function impaired is serious, the impairment, if any, was temporary and apparently rectified by the time Dr. Barnes tested plaintiff in 1996. Further, the sole treatment needed to rectify the impairment was outpatient, non-invasive therapy lasting only six weeks. Defendant also presented evidence of plaintiff's abilities and activities before and after the accident. This evidence demonstrated plaintiff's ability to obtain a higher paying full-time job, her ability to care for her son without assistance, and her ability to purchase a home and manage her household. On this record, we conclude that there was sufficient evidence from which reasonable jurors could honestly have differed on the issue of whether plaintiff had suffered a serious impairment of body function. Therefore, JNOV was inappropriate. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998).

Because we conclude that the jury verdict of no cause of action should stand, we need not address defendant's remaining claims.

Reversed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell