

STATE OF MICHIGAN
COURT OF APPEALS

NORMA TRAMEL,

Plaintiff-Appellee,

v

CONTINENTAL INSURANCE COMPANY,

Defendant-Appellant,

and

NINA MAE YARBROUGH and SHELIA
YARBROUGH,

Defendants.

UNPUBLISHED

July 22, 2004

No. 246597

Wayne Circuit Court

LC No. 00-034551-NF

Before: Jansen, P.J., and Meter and Cooper, JJ.

PER CURIAM.

Defendant Continental Insurance Company (“Continental”) appeals as of right an order dismissing codefendants Nina Mae Yarbrough and Sheila Yarbrough (the “Yarbroughs”)¹ in this action for uninsured motorist benefits pursuant to MCL 500.3135. Specifically, defendant argues that plaintiff Norma Tramel did not suffer a serious impairment of a body function and that the award of attorney fees was unreasonable and excessive. We affirm.

I. Facts and Procedural History

The circumstances surrounding this case arose from a motor vehicle accident on May 6, 2000, in which plaintiff was struck from the rear and pushed into a vehicle in front of her by

¹ Continental’s appeal is based upon the jury verdict entered on October 29, 2002. However, the order dismissing the Yarbroughs was the final order, as defined in MCR 7.202(7), because it disposes of the final claim and adjudicates the rights and liabilities of all parties. As Continental is the only defendant appealing, we will refer to Continental as the singular defendant throughout this opinion.

another vehicle that fled the scene of the accident. Plaintiff contended that the accident exacerbated injuries sustained in an August 19, 1998 motor vehicle accident, as well as causing new injuries. On July 30, 2001, a mediator evaluated the case at \$18,000, which defendant rejected.

Plaintiff testified that prior to the 1998 accident, she was a very active person. However, since the previous accident, plaintiff has suffered from chronic cervical radiculopathy causing pain on the left side of her body.² Plaintiff continued receiving physical therapy on her neck and back and receiving shots to block the pain until the 2000 accident. Following the earlier accident, plaintiff was still able to work as a housekeeper although restricted to light duty.

Plaintiff sought medical attention for her injuries the morning following the 2000 accident. Plaintiff experienced shooting pain in her right arm and hand and was diagnosed with right cervical radiculopathy, which was verified by an EMG. Plaintiff began occupational therapy for her right arm and continued physical therapy through November of 2001. Plaintiff's physician, Laran Lerner, noted a marked aggravation of plaintiff's existing condition following the second accident. Plaintiff could no longer twist or bend and was unable to lift over five pounds. Plaintiff could not use her right hand, sit, stand or walk for prolonged periods. Plaintiff could no longer perform her functions as a housekeeper, even in a restricted capacity, and also required assistance in her own home. Due to the exacerbated injuries, plaintiff doubled the number of pain injections she received a month.

II. Serious Impairment of a Body Function

Defendant first contends that the trial court erroneously dismissed its motion for judgment notwithstanding the verdict (JNOV), as plaintiff did not have a serious impairment of a body function. We disagree. We review de novo the trial court's decision regarding a motion for JNOV.³ We view the evidence presented up to the time the motion was made in the light most favorable to the nonmovant to determine whether a factual question exists over which reasonable minds could differ.⁴

In order to recover in tort for a motor vehicle accident, a plaintiff must meet the no-fault threshold pursuant to MCL 31.35(1).⁵ The initial determination regarding the existence of a threshold injury is a question of law for the trial court.⁶ One way for a plaintiff to meet that

² Plaintiff's previous injuries were objectively verified by MRI and EMG results.

³ *Sniecinski v Blue Cross & Blue Shield*, 469 Mich 124, 131; 666 NW2d 186 (2003).

⁴ *Anton v State Farm Mut Auto Ins Co*, 238 Mich App 673, 683; 607 NW2d 123 (1999).

⁵ There is no liability for uninsured motorist benefits unless the plaintiff's injuries meet the no-fault threshold of serious impairment of body function. *Auto Club Ins Ass'n v Hill*, 431 Mich 449, 466; 430 NW2d 636 (1988).

⁶ MCL 500.3135(2)(a); *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001).

threshold is by establishing that her injury is a “serious impairment of a body function.”⁷ The phrase “serious impairment of a body function” is defined by statute as “an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.”⁸ The trial court determined that an “outcome-determinative genuine factual dispute” existed, and submitted the issue to the jury.⁹

To establish the existence of a “serious impairment of a body function,” there must be an objectively manifested impairment of an important body function affecting a person's general ability to lead her normal life.¹⁰ An objectively manifested impairment is a medically identifiable injury or condition that has a physical basis.¹¹ To determine whether an injury impairs an important body function, it is proper to consider the extent of the injury, treatment required, duration of the disability, extent of residual impairment, and prognosis for eventual recovery.¹² Finally, while a *serious* effect on a person's general ability to lead her normal life is unnecessary, simply *any* effect will be insufficient.¹³ The effect on the person's general ability to lead her normal life is determined by comparing her lifestyle before and after the injury.¹⁴

Viewed in the light most favorable to plaintiff, the evidence shows that plaintiff suffered an objectively manifested impairment of an important body function. After the 2000 accident, plaintiff experienced pain in her right arm into her right hand almost every day. Plaintiff's injuries were extended from her left side only to both the left and right side. Plaintiff presented the testimony of Dr. Lerner that her existing injuries were exacerbated by the 2000 accident, and that she suffered new injuries as well. She was required to undergo occupational therapy, continue her physical therapy, and increase her pain injections. Plaintiff's injuries were also verified by an EMG. Based on the evidence, a jury could find that plaintiff's injuries amounted to an objectively manifested impairment.

Furthermore, the jury could find based on the evidence that plaintiff's injuries seriously affected her general ability to lead her normal life. Following the 2000 accident, plaintiff could no longer twist or bend, perform any household chores, and required assistance caring for her home. Dr. Lerner testified that plaintiff could not lift anything greater than five pounds, repetitively bend, twist or use her right hand, or sit or stand for prolonged periods of time.

⁷ MCL 500.3135(1); *Jackson v Nelson*, 252 Mich App 643, 644; 654 NW2d 604 (2002).

⁸ MCL 500.3135(7); *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

⁹ *Miller*, *supra* at 246, citing *Kern*, *supra* at 341.

¹⁰ *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 685; 671 NW2d 95, lv gtd 469 Mich 948 (2003).

¹¹ *Jackson*, *supra* at 653.

¹² *Kern*, *supra* at 341.

¹³ *Kreiner v Fischer*, 468 Mich 884, 884; 661 NW2d 234, on rem 256 Mich App 680 (2003).

¹⁴ *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Plaintiff could perform light work duties before the accident, but could no longer perform her job as a housekeeper after. Again, viewed in the light most favorable to plaintiff, the evidence shows that her injuries affected her general ability to lead her normal life. Therefore, the trial court properly denied defendant's motion for JNOV.

III. Attorney Fees

Defendant argues that the attorney fees awarded to plaintiff were unreasonable and excessive. We disagree. A trial court's determination of reasonable attorney fees is reviewed for an abuse of discretion.¹⁵ In making a determination regarding the reasonableness of requested fees, the court may consider:

(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.^[16]

The trial court awarded plaintiff \$17,520 in attorney fees. Plaintiff's counsel alleged spending 90.85 hours on plaintiff's case after August 28, 2001, when defendant rejected the mediation award. The court awarded attorney fees of approximately \$193 an hour. We first note that this rate is commensurate with the prevailing rates in the area. We also reject defendant's contention that ninety hours of work is excessive and unreasonable. The trial in this matter took three full days. Plaintiff's counsel attended depositions and conducted a medical deposition in preparation for the trial. Furthermore, as Michigan's no-fault law is constantly changing, it is reasonable to expect plaintiff's counsel to conduct current research. Therefore, the trial court's award of attorney fees was reasonable and proper.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Jessica R. Cooper

¹⁵ *Elia v Hazen*, 242 Mich App 374, 377; 619 NW2d 1 (2000).

¹⁶ *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), quoting *Smolen v Dahlman Apartments, Ltd*, 186 Mich App 292, 295-296; 463 NW2d 261 (1990); *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973).