

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER LYNN ANCEL,

Plaintiff-Appellant,

v

BRYAN JAMES FOCO, DAVID ELDON
SWEEBE, and BAY REGIONAL MEDICAL
CENTER,

Defendants-Appellees.

UNPUBLISHED

May 27, 2010

No. 289658

Bay Circuit Court

LC No. 08-003289-NI

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Plaintiff, Jennifer Lynn Ancel, appeals as of right the grant of summary disposition in favor of defendants. We affirm.

“A person remains subject to tort liability for non-economic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). The issue of whether a person has suffered a serious impairment of bodily function is a question of law for the court if the court finds either of the following: (a) There is no factual dispute concerning the nature and extent of the person’s injuries; or (b) there is a factual dispute concerning the nature and extent of the person’s injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function. MCL 500.3135.

The Legislature defined “serious impairment of body function” 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). Accordingly, to meet this threshold, plaintiff must have (1) an objectively manifested impairment, (2) of an important body function, which (3) affects her general ability to lead her normal life.

In the case at issue, the record supports that there was a factual dispute concerning plaintiff’s injuries, specifically whether plaintiff had continued lifting restrictions. However, this dispute is not material to the determination whether plaintiff has suffered a “serious impairment of body function” because it was not material to a determination whether plaintiff sustained a serious impairment of a bodily function.

Plaintiff suffered an impairment of an important body function that was objectively manifested. Plaintiff alleged and complained of pain in her back and legs, among other ailments, which caused her pain when walking, sitting or lying supine. Walking, sitting, and sleeping are important body functions. The ailments were objectively manifested by the MRI, which showed mild disc bulges at C6-C7 and L4-L5 and an EMG, which showed C4-C5 and L5 radiculopathy. No medical testimony or affidavits were offered in support of plaintiff's claim.

The real issue in this case is whether the impairment affected plaintiff's general ability to live her life. This third prong involves a multifaceted inquiry, comparing plaintiff's life before and after the accident. A determination of the issue requires an objective analysis of the effect on the impairment on plaintiff's lifestyle to determine if plaintiff's "general ability" to lead his or her normal life has been affected. A non-exhaustive list of objective factors includes: (a) the nature and extent of impairment; (b) the type and duration of treatment required; (c) the duration of the impairment; (d) the extent of residual impairment; and (e) the prognosis for eventual recovery. However, as stated in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004):

This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves. For example, that the duration of the impairment is short does not necessarily preclude a finding of a "serious impairment of body function." On the other hand, that the duration of the impairment is long does not necessarily mandate a finding of "serious impairment of body function." Instead, in order to determine whether one has suffered a "serious impairment of body function," the totality of the circumstances must be considered, and the ultimate question that must be answered is whether the impairment affects the person's general ability to conduct the course of his or her normal life. [*Id.* at 133-134.]

Plaintiff's life after the accident is not significantly different than her life before the accident. She has continued to work for the same employer, doing the same job function, with the exception of making the occasional customer delivery. She continues to care for her children, and keep up her home. Looking at plaintiff's life as a whole, before and after the accident, and the nature and extent of her injuries, her impairment did not affect her overall ability to conduct the course of her normal life. While she cannot participate in some minor recreational activities to the extent that she could before the accident, a negative effect on a particular aspect of an injured person's life is not sufficient itself to meet the tort threshold, as long as the injured person is still generally able to lead her normal life. *Id.* at 37.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Pat M. Donofrio