

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA JOWERS,

Plaintiff-Appellee,

v

GLEN OAKS APARTMENTS,

Defendant-Appellant.

UNPUBLISHED
September 1, 2000

No. 217164
Muskegon Circuit Court
LC No. 97-336707-NO

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I respectfully dissent from the majority's order of remittitur regarding the jury's award of damages for future wage loss. I would find that the jury's award for future wage loss was supported by the evidence, and was not too speculative as the majority concludes.

As a result of the fall on the icy steps, plaintiff broke two bones in her right leg in February 1997. Because plaintiff could not work or do a number of other everyday activities, she later underwent surgery in May 1997, where a steel rod and screws were inserted into her leg. Her orthopedic surgeon, Dr. Schneeberger, did not release her to work until November 1997. Dr. Schneeberger testified that he planned to perform additional surgery in 1998, that there was a good chance that plaintiff would develop degenerative arthritis in her ankle, and that he was sure that plaintiff will develop some arthritis in her ankle in the future. Dr. Schneeberger further testified that when the arthritis develops, as it becomes more painful, it will limit plaintiff's ability to be on her feet all day, to stand, to walk, to work, and to do "those types of things." He also testified about the permanence of the injury, stating that plaintiff sustained a permanent shortening of her leg of one-half inch that would have to be treated to avoid back pain and curvature of the spine.

Plaintiff, who is a mental health aide with the county's community mental health agency, testified that part of her job duties include assisting developmentally disabled people and that she is expected to run, walk, and be able to lift at least one hundred pounds. She also testified that she now walks with a limp, that she continues to experience pain in her right leg, that her right leg feels sore at the end of the work day, and that she can no longer run or walk as quickly or as far as before. Additionally, the vocational rehabilitation counselor's testimony, although based on a hypothetical (if plaintiff lost the last

five years of her work life at her present position, she would lose approximately \$150,000 in earnings), was not blindly accepted by the jury since it actually awarded a total of \$90,000 in lost future wages.

Based on this testimony, the jury's award for future wage loss is not speculative, but is obviously based on the evidence that plaintiff has permanent, long-term medical problems with her leg (and not just the arthritis) that will affect her job duties. MCR 2.611(E)(1). Consequently, the trial court, who presided over the trial and had the opportunity to observe the witnesses and the evidence, did not abuse its discretion in denying defendant's motion for remittitur. *Palenkas v Beaumont Hosp*, 432 Mich 527, 533-534; 443 NW2d 354 (1989).

I would affirm and otherwise agree with the majority's disposition of the other issues.

/s/ Kathleen Jansen