

STATE OF MICHIGAN
COURT OF APPEALS

JEANNE CATES and WILLIAM BATES, II,

Plaintiffs-Appellants,

v

ANGELETTE MARIA MOORE MELHADO,

Defendant-Appellant.

UNPUBLISHED

October 3, 2006

No. 264557

Wayne Circuit Court

LC No. 04-424233-NI

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

COOPER, J. (*dissenting*).

The majority finds that whether plaintiff Cates suffered a serious impairment of body function was a question of law, and that the trial court did not err in finding Cates' life had been significantly affected by the accident. Because I disagree with both conclusions, I must respectfully dissent.

MCL 500.3135(2)(a) provides that:

The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

The threshold question then is whether there is a factual dispute about the nature and extent of the injuries; only if that question is answered in the negative should the court move on to consideration of whether there is serious impairment of body function.

Here, defendant asserted plaintiff suffered only soft tissue injuries. However, although they were taken nearly two years after the accident, x-rays and an MRI did reveal that Cates suffered from a disc herniation at L4 and degenerative disc disease. The treating physician indicated that little could be done for the patient other than pain management, and prescribed a TENS unit for that purpose. I would find, given the contrary positions taken and supported by the parties, that a question of fact exists as to the nature and extent of plaintiff's injuries.

As to the question of serious impairment, defendant argued, and the trial court and this Court agreed, that Cates' injuries had not affected her general ability to lead her normal life.

However, plaintiff Cates stated that she missed some work after the accident, that she could no longer play with her two-year-old grandchild, that she could no longer dance nor bowl, and that she and her husband did not engage in intimate relations as a result of the accident. While Cates and her husband were still able to travel, they had to prearrange wheelchair availability in case Cates was in more pain than usual.

I would find that this litany of changes to plaintiff's life creates, at a minimum, a question about whether the trajectory of Cates' life had been significantly affected by the accident. I would find that to "affect[] the person's general ability to lead his or her normal life," MCL 500.3135(7), an injury need not absolutely preclude participation in particular activities. Cates now needs a wheelchair to travel and she needs a chair at work. Her ability to engage in those activities has been affected. In addition, her ability to participate in other activities is entirely precluded. Most importantly, she stated in her deposition that she is in near constant pain. This surely affects her ability to lead her normal life, even if the court cannot quantify that affect. I would find that the question of how much pain is too much cannot be a question of law, but should be left to the trier of fact.

I would reverse and allow a jury to decide the nature and extent of plaintiff's injuries, and whether they have had a significant affect on her ability to lead her normal life.

/s/ Jessica R. Cooper