

STATE OF MICHIGAN  
COURT OF APPEALS

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TIFFANY NETTER,

Plaintiff-Appellant,

v

E&P ENTERPRISES, INC., ERNEST MICHAEL  
FISCHER, and DOROTHY EDWINDA REICH,

Defendants-Appellees.

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UNPUBLISHED

October 27, 2005

No. 263345

Oakland Circuit Court

LC No. 04-058989-NI

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

In this no-fault action, plaintiff appeals as of right from the circuit court's order granting summary disposition to defendants. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A vehicle allegedly crossed all lanes of traffic and smashed into the vehicle in which plaintiff was riding. Plaintiff filed suit against the owners and operator of the vehicle, asserting that she had suffered a serious impairment of body function, and economic damages beyond the personal protection benefits required by the no-fault act. MCL 500.3101 *et seq.* In granting defendants' motion for summary disposition, the trial court concluded that defendant failed to provide evidence of an objective manifestation of a serious impairment of body function, and that her claim for economic damages was speculative at that time.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

I. Noneconomic Damages

MCL 500.3135(1) provides that "[a] person remains subject to tort liability for noneconomic 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." Subsection 7 states that "'serious impairment of body function' means an

objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." Subsection 2 establishes that whether a person has suffered serious impairment of a body function is a question of law for the court where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered serious impairment of a body function. Accordingly, "the issue . . . should be submitted to the jury only when the trial court determines that an 'outcome-determinative genuine factual dispute' exists." *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), quoting *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). Factors to consider include the extent of the injury, treatment required, duration of the disability, extent of residual impairment, and the prognosis for eventual recovery. *Miller, supra* at 248. The focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body. *Id.* at 249.

Plaintiff relies entirely on her injured knee as the basis for her claim. She acknowledges that no evidence showed that she sustained a tear of the meniscus, but she provides no argument why descriptions of apparently lesser conditions set forth a serious impairment of an important body function. For these reasons, we conclude that plaintiff has failed to show that the trial court erred in granting summary disposition to defendants of her claim for noneconomic damages.

## II. Economic Damages

MCL 500.3107(1)(b) provides that personal protection insurance benefits are payable for "[w]ork loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured." Subsection 1(c) adds that benefits are payable for "[e]xpenses not exceeding \$20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that . . . an injured person would have performed during the first 3 years after the date of the accident . . . for the benefit of himself or herself . . . ." MCL 500.3135(3)(c) confirms that the general abolition of tort liability under the no-fault act does not extend to "[d]amages for allowable expenses [and] work loss . . . in excess of the daily [or] 3-year limitations . . . ."

Plaintiff's complaint included the assertion that her injuries would cause her to suffer lost earnings, and expenses for needed assistance, for more than three years after the accident. A plaintiff may recover economic damages for work loss in excess of three years even if that plaintiff is not entitled to noneconomic damages for serious impairment of body function. *Cochran v Myers*, 146 Mich App 729, 731; 381 NW2d 800 (1985). This logically applies as well to economic damages for services needed after three years.

Defendants' written motion for summary disposition was predicated solely on their assertion that plaintiff's injuries did not rise to the level of a serious impairment of body function, but the trial court entertained oral arguments on the claim for economic damages. The trial court held that "it's supposition at this time as to whether or not she will be employable at that time," and so granted defendants summary disposition on that claim as well.

The trial court's statement about the uncertainties concerning whether plaintiff would be able to join the work force three years after the accident seem to imply that the trial court was deciding that claim without prejudice; however, the order appealed from dismisses the case "in

its entirety with prejudice.” This was error. Claims for economic damages three years after the accident are actionable before those three years have passed. See *Cochran, supra* at 732.

Plaintiff’s affidavit from her physician opines, “within a reasonable degree of medical certainty that [plaintiff] has been disabled from her employment since February 19, 2003 to the present and that said disability will continue indefinitely into the future,” then details that plaintiff “has been disabled from performing household activities which require bending, lifting, twisting and prolonged standing since February 19, 2003[,] and indefinitely into the future.” This affidavit dates from April 20, 2005, more than two years after the accident, and nine months before the three years of potential insurance coverage will have passed. This affidavit presents something better than conjecture concerning the possibility that plaintiff’s injuries may cost her work loss and living expenses after the date in question.

Because the trial court did not address the evidentiary record concerning plaintiff’s future prospects for remaining disabled from employment, and nowhere acknowledged plaintiff’s claim for necessary expenses after three years, we conclude that the court erred in dismissing plaintiff’s claim for economic damages. Accordingly, we reverse that part of the trial court’s decision and remand this case to the trial court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder