

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

ELLEN KOSCHAK, formerly known as	:
ELLEN CHAMBERS	: NO. 07-00371
	:
	:
v.	:
	: CIVIL ACTION - LAW
CLAUDIA ROBBINS	:

OPINION

This matter comes before the Court on Defendant’s Motion for Summary Judgment. Defendant argues that Plaintiff did not breach the limited tort threshold to permit recovery for non-economic damages. Plaintiff argues that she has suffered a serious impairment of a body function so as to pierce the limited tort threshold.

The Pennsylvania Supreme Court provided us with substantial guidance in the matter before the Court in its decision of Washington v. Baxter, 719 A.2d 733 (Pa. 1998). The Supreme Court held that our legislature, in drafting the limited tort statute with guidance from Michigan’s no-fault statute, intended that “the traditional summary judgment standard was to be followed and that the threshold determination [of serious injury] was not to be made routinely by a trial court judge... but rather was to be left to a jury *unless reasonable minds could not differ on the issue of whether a serious injury has been sustained.*” Id. at 740. The Court went on to say that the ultimate determination should be made by the jury in all but the clearest of cases. Id.

The Court explained how a Court determines what a serious impairment of body function is. In adopting the DeFranco^I standard, the Court stated, “The serious impairment of body function threshold contains two inquiries: (a) What body function, if any, was impaired because of injuries sustained in a motor vehicle accident?; (b) Was the impairment of the body function serious?” Id. The Supreme Court stated that, “In determining whether the impairment is serious, the Court should consider: the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment and any other relevant factors. Washington at 740.

In the case at bar, Plaintiff cites to the case of Kelly v. Ziolk, 734 A.2d 893 (Pa. Super. 1999) as analogous to support her contention that she did suffer a serious injury.

Kelly testified at trial to the following facts regarding the injuries he sustained as a result of the accident: he suffers pain in his neck, back, and knees, and intermittent numbness in two toes on his left foot. Immediately following the accident he was taken to Good Samaritan Hospital's Emergency Room where he was given a soft collar for his neck and discharged less than two hours later in stable condition. As a result of his injuries, he has undergone a course of physical therapy and taken an MRI which indicated that he suffers from a herniated disk. He was subsequently put on pain medication and voluntarily sought and received treatments for his injured back from a local chiropractor. He described his daily discomfort in his lower back as a "dull, achy pain." He has knee pains approximately once a week.

Kelly further asserted that his back pain occurs as a result of physical activity or sitting for long periods of time; he has trouble sleeping, cannot run, is unable to walk or sit for longer than 15 minutes, and finds it difficult to play with his child. He also contends that he is no longer able to engage in the following recreational activities: riding his mountain bike, riding his motorcycle, and hunting.

I Our Supreme Court adopted the definition of “serious impairment of body function” as laid out in DiFranco v. Pickard, 427 N.W.2d 896 (Mich. 1986).

The facts also reveal that Kelly returned to work only three days after the accident; he was able to return to his full work duties within a short period of time. Part of his work duties included lifting drywall and performing carpentry-related tasks. Clinically, Kelly sought follow-up medical treatment from the effects of the accident three weeks following said accident. Furthermore, Kelly testified that the doctor who diagnosed his herniated disk did not recommend surgery. Kelly voluntarily sought chiropractic treatment for his back injuries. Kelly's treatment during recovery involved physical therapy, the use of a TENS unit, and exercise.

Kelly remains gainfully employed in his former occupation with minor limitations on lifting heavy objects. Although he claims he is restricted in his recreational activities, he receives no treatment or prescriptive medication for his pain. Id. at 899-900.

The Kelly Court found the above mentioned facts to be sufficient to support a finding that Plaintiff suffered a serious injury.

As stated above, “In determining whether the impairment is serious, the Court should consider: the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment and any other relevant factors. Washington at 740. In the case at bar, Plaintiff alleges that one year after the alleged accident she is no longer treating for pain and has no functional limitations. She further testified that prior to the accident she routinely jogged three to four times a week. She alleges that she is no longer able to jog due to pain in her neck. Plaintiff further testified that she regularly participated in bicycling events before the accident and now can only bicycle a fraction of what she could before. She further testified that bending her neck, leaning over, raising her arms, lifting significant weights and driving for any length of time causes neck pain. Plaintiff further alleges that as compared to her abilities before the accident, now she can perform 0% of the running, 5% of the bicycling and 50% of the lifting and household

chores that she could before. Plaintiff further testified that with regard to regaining her abilities that she had prior to the accident, she has been told, “that’s the way it’s going to be.”

Summary Judgment may be properly granted “...when the uncontroverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. Rauch v. Mike-Mayer, 783 A.2d 815, 821 (Pa. Super. 2001). The movant bears the burden of proving that there are no genuine issues of material fact. Id. In determining a motion for summary judgment, the court must examine the record “in the light most favorable to the non-moving party, accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.” Godlewski v. Pars Mfg. Co., 597 A.2d 106, 107 (Pa. Super. 1991). Summary judgment may be properly entered if the evidentiary record “either (1) shows that the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense.” Rauch at 823-24.

It is acknowledged by the Court that, accepting as true all well pleaded facts in its pleading and giving the Plaintiff the benefit of all reasonable inferences, the alleged physical limitations of Plaintiff, if proven true, could constitute a serious impairment of body function. According to Plaintiff’s allegations the extent of the impairment is severe, the length of time the impairment could last is indefinite and the treatment required to correct the impairment may not be available. Therefore giving deference to the Superior Court’s analysis as set forth in Kelly, supra, this Court is constrained from removing the case from a jury’s consideration.

ORDER

AND NOW, this ___ of March, 2009, it is hereby ordered and directed that Defendant's Motion for Summary Judgment is DENIED.

BY THE COURT,

Judge Richard A. Gray

cc: Cynthia Person, Esquire
N. Randall Sees, Esquire
Gary Weber, Esquire
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