

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PENNSYLVANIA

|               |   |              |
|---------------|---|--------------|
| BEULAH MEYER, | : |              |
| Plaintiff     | : | NO. 10-01762 |
|               | : |              |
| vs.           | : |              |
|               | : |              |
| MARY BOWER,   | : | CIVIL ACTION |
| Defendant     | : |              |

**OPINION**

This matter arises from a motor vehicle accident that occurred on September 30<sup>th</sup>, 2008. Defendant's vehicle, a Cadillac Escalade, struck Plaintiff's vehicle, a 1987 Mercury GR Marquis, from behind while Plaintiff turned into the Giant Plaza from Westminster Drive in Williamsport, Lycoming County, Pennsylvania. As a result of this accident, Plaintiff seeks compensatory damages for economic losses, in the form of medical expenses, as well as non-economic loss. At the time of the accident, Plaintiff was insured by a limited tort insurance policy.

On June 24, 2011, Defendant filed a Motion for Partial Summary Judgment. Defendant seeks entry of partial summary judgment of Plaintiff's claim for non-economic damages. Defendant asserts that this Court should not grant Plaintiff these damages because Plaintiff did not sustain a serious injury, as required under the limited tort alternative in the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1705(b).

In the context of a summary judgment motion, evidence must be viewed in the light most favorable to the non-moving party and doubts must be resolved against the

moving party. *Washington v. Baxter*, 719 A.2d 733, 737 (Pa. 1998). To withstand a summary judgment motion, the non-moving party must provide “sufficient evidence on an issue essential to his case on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material of fact and that the moving party is entitled to judgment as a matter of law.” *Id.* (citing *Ertel v. Patriot-News Co.*, 674 A.2d 1038, 1042 (Pa. 1996). Only when cases are free and clear from doubt will summary judgment be granted. 719 A.2d at 737.

75 Pa.C.S.A. § 1705(b) provides that

[e]ach person who elects the limited tort alternative remains eligible to seek compensation for economic loss sustained in a motor vehicle accident as the consequence of the fault of another person pursuant to the applicable tort law. Unless the injury sustained is a *serious injury*, each person who is bound by limited tort election shall be precluded from maintaining an action for any noneconomic loss....

75 Pa.C.S.A. § 1705(b) (emphasis added). Section 1702 defines serious injury as “[a] personal injury resulting in death, serious impairment of a body function or permanent serious disfigurement.” 75 Pa.C.S.A. § 1702. In determining whether a serious impairment of a bodily function has occurred, a two prong inquiry exists: 1) what body function was impaired, and 2) was this impairment serious. 719 A.2d at 740. The focus is not on the injury itself, but how the injury affects a bodily function. *Graham v. Campo*, 990 A.2d 9, 16 (Pa. Super. 2010); *Long v. Mejia*, 896 A.2d 596, 600 (Pa. Super. 2006); *Robinson v. Upole*, 750 A.2d 339, 343 (Pa. Super. 2000). In determining whether an injury is serious, the court considers four factors: “the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors.” 990 A.2d at 16; 896 A.2d at

600; 719 A.2d at 740. Permanency of the impairment is not required for a finding of serious impairment. 719 A.2d at 740.

In *Graham*, a limited tort selector sustained a nerve root injury, along with cervical, thoracic, and lumbar strains and sprains, after a driver hit her vehicle from behind. 990 A.2d at 11, 16. The Superior Court upheld the trial court's ruling the injuries sustained by the limited tort selector were serious because these permanent injuries affected her daily by hindering her ability to "reach, grasp, [or] to use her arm on any repetitive basis." *Id.* at 16. The injuries restricted the selector "from doing daily activities such as vacuuming, washing her hair, styling her hair, getting dressed, putting on jewelry, mixing and cooking, driving, typing, taking spinning classes, and lifting her granddaughter." *Id.* at 17.

Similar to *Graham*, this case involves a limited tort selector sustaining allegedly permanent injuries after an automobile accident. Two days after the September 30<sup>th</sup> accident, The Williamsport Hospital diagnosed Plaintiff with a neck strain/sprain and a chest wall strained. A month after the accident, a doctor diagnosed Plaintiff with cervical disc degeneration, a cervical spine sprain/strain, a thoracic sprain/strain, and a lumbosacral sprain. Plaintiff underwent two years of chiropractic treatment and physical therapy, with no avail, to remedy these injuries. As a result of these injuries, Plaintiff cannot lift her right arm above shoulder level, and she has difficulty dressing and driving. Plaintiff cannot plant and weed her yard or clean her home as she did prior to this accident. Additionally, Plaintiff stopped attending religious services and social functions because of the pain caused when she sits and stands for extended periods of time.

Considering the evidence in the light most favorable to Plaintiff, Plaintiff has provided sufficient evidence so that reasonable minds could differ when determining whether she suffered a serious impairment of a bodily function. Accordingly, there is a jury issue on serious impairment.

**ORDER**

AND NOW, this 7<sup>th</sup> day of September 2011, for the reasons set forth above, Defendant's Motion for Partial Summary Judgment is hereby DENIED.

BY THE COURT,

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Richard A. Gray, J.

RAG/abn

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