

STATE OF MICHIGAN  
COURT OF APPEALS

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RAYMOND H. REYNOLDS and BETHANY J.  
REYNOLDS,

Plaintiffs-Appellants,

DEC 17 1986

v

No. 88740

WESLEY T. KITCHEN,

Defendant-Appellee.

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Before: J.H. Shepherd, P.J., and J.H. Gillis  
and B.B. MacKenzie, JJ.

PER CURIAM

Plaintiffs sued defendant, alleging serious impairment of a body function arising out of injuries sustained in an automobile accident caused by defendant. Defendant moved for summary judgment, claiming that plaintiffs had failed to establish that plaintiff Bethany Reynolds had suffered impairment of a body function such that she would be entitled to seek tort recovery for non-economic losses. The trial court granted defendant's motion. Plaintiffs appeal as of right. We affirm.

Michigan's no-fault insurance law was enacted for the purposes of providing the victims of motor vehicle accidents with adequate and prompt reparation for loss and of reducing the number of tort claims resulting from automobile accidents, which often over-compensated minor injuries and under-compensated serious injuries. Shavers v Attorney General, 402 Mich 554, 578-579; 267 NW2d 72 (1978). Thus, tort liability will be imposed only in the limited circumstances expressed in MCL 500.1315(1); MSA 24.1315(1):

"A person remains subject to tort liability for non-economic 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."

When there is no material dispute as to the nature and extent of a plaintiff's injuries, courts are to decide as a matter of law whether there has been a serious impairment of body function under Michigan's no-fault act. Cassidy v McGovern, 415 Mich 483, 488; 330 NW2d 22 (1982), reh den 417 Mich 1104 (1983). Hence, this Court reviews serious impairment cases by viewing the facts in the light most favorable to the plaintiff in order to determine whether the trial court erred in finding that there was no material factual dispute regarding the nature and extent of plaintiff's injuries. Id. If the trial court correctly found that there was no such dispute, this Court must determine whether as a matter of law the trial court erred in finding that there had been a serious impairment of an important body function. Id.

Serious impairment of a body function must be determined on a case-by-case basis. Cassidy, supra, 503; Williams v Payne, 131 Mich App 403, 409; 346 NW2d 564 (1984). Nonetheless, some guidelines have been established. In order to meet the threshold of serious impairment of a body function, an injury must be objectively manifested, serious, and it must impair an important body function. Cassidy, supra, 504-505. The seriousness of an impairment must be measured by an objective standard which looks to the effect of the injury on a person's general ability to lead a normal life. Cassidy, supra, 505; Braden v Lee, 133 Mich App 215-218; 348 NW2d 63 (1984). The injury need not be permanent to be serious, but permanency is relevant. Cassidy, supra, 505-506; Guerrero v Schoolmeester, 135 Mich App 742, 747; 356 NW2d 251 (1984), lv den 422 Mich 880 (1985). Moreover, the objective manifestation requirement is not met by a plaintiff's complaints of symptoms; instead, the injury itself must be objectively manifested. This Court has held that to be objectively manifested, an injury must be capable of medical measurement because medically unsubstantiated pain will always be present in a tort action for pain and suffering.

Williams, supra, 409-410. Hence, pain and suffering are not recoverable per se, but they are recoverable when they arise out of an injury that affects the functioning of the body. Cassidy, supra, 505; Guerrero, supra, 747. Finally, the serious impairment requirement must be considered in light of the other two requirements of the no-fault statute, namely, death and permanent serious disfigurement. Cassidy, supra, 503.

In this case, contrary to Mrs. Reynolds' assertions, there is no factual dispute as to the nature and extent of her injuries. Following the accident, Mrs. Reynolds was in traction for a week with a possible neck fracture. Subsequently, it was discovered that she had sustained no fracture and she was released from the hospital. Mrs. Reynolds also missed two months of work and her sister had to help her with housekeeping chores. Mrs. Reynolds continues to have problems if she sits or drives for long periods of time, if she bends, and if she lifts. She also claims her interest in sexual intercourse has declined. Mrs. Reynolds now works as a church custodian and her activities are not limited except to the extent described above.

Prior to the accident, Mrs. Reynolds apparently had cyclothymic disorder, a genetic psychological disorder. Cyclothymic disorder is a mild form of manic depressive illness. Symptoms include severe insomnia, racing thoughts and, of course, wide mood fluctuations (i.e., a person suffering from this illness is either overly energetic or lethargic). Related problems include intensified pain perceptions, migraine headaches and, in women, premenstrual syndrome. These symptoms may be exacerbated following a triggering factor, such as, child birth, an accident, divorce, and loss of a job.

Because of the pain Mrs. Reynolds experienced after the accident, her physician prescribed painkillers, including Demerol. As a result of her increased pain perceptions because of the cyclothymic disorder, Mrs. Reynolds overused the Demerol

and became addicted to it. Moreover, when she learned that her son wanted to move in with his father, she became extremely upset and she took an overdose of Vistaril, an antihistamine, in an apparent suicide attempt. Mrs. Reynolds, however, denied that she had attempted suicide. We note that she took this overdose within three weeks of her discharge from the hospital which treated her following the accident.

The trial court found that Mrs. Reynolds' injuries were not serious and were not objectively manifested. On appeal, Mrs. Reynolds claims her initial week-long hospitalization was serious because she was essentially immobilized until the doctors determined she had not fractured her neck. However, we agree with the trial court and find that Mrs. Reynolds was and is able to lead a normal life, despite this short period of immobilization. Sherrell v Bugaski, 140 Mich App 708; 364 NW2d 684 (1984); Braden, supra.

Mrs. Reynolds also claims that her addiction to Demerol and subsequent overdose of Vistaril were serious impairments. Following the overdose, Mrs. Reynolds was hospitalized for 12 days. Within 8 days, she was cured of her Demerol dependency. At the time of discharge, no restrictions were placed on her activities. She was given Lithium to control her mood swings.

We again agree with the trial court that Mrs. Reynolds' injuries were not serious under Cassidy, supra. Her abuse of Demerol lasted for a short period of time. Mrs. Reynolds did not claim that her abuse of the drugs caused her to lead anything other than her normal lifestyle. In fact, her abuse of Demerol and later Vistaril resulted from her increased pain perceptions which, in turn, resulted from her pre-existing psychological disorder. Following her discharge, Mrs. Reynolds immediately returned to a normal life; hence, we believe she did not suffer a serious impairment under Cassidy, supra.

Moreover, even if we concluded that Mrs. Reynolds' addiction was serious, it was not objectively manifested. Mrs. Reynolds apparently over-medicated herself to relieve the "pains" she felt in her neck and back, allegedly the results of her automobile accident. There was no physical basis for this pain; therefore, it was not objectively manifested. Garris v Vanderlaan, 146 Mich App 619; 623-624; 381 NW2d 412 (1985); Williams, supra.

Similarly, we find that the "aggravation" of Mrs. Reynolds' pre-existing cyclothymic disorder was not objectively manifested. Id. Even if her condition was "aggravated" by the accident, Mrs. Reynolds' lifestyle was not affected and, therefore, this impairment was not serious. Sherrell, supra; Braden, supra.

Affirmed.

/s/ John H. Gillis  
/s/ Barbara B. MacKenzie

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BEFORE: J.H. Shepherd, P.J., J.H. Gillis and MacKenzie, JJ.

JOHN H. SHEPHERD, P.J., Dissenting

I agree that plaintiff's physical injuries taken by themselves do not cross the Cassidy threshold and summary judgment in favor of defendant would be justified if this were all that plaintiff claims as her injuries. However, a medical report dated May 18, 1983 which resulted from a complete examination indicates as follows:

"DIAGNOSTIC IMPRESSION:

- "1. Cyclothymic disorder
- "2. Demerol withdrawal
- "3. Suicidal attempt by overdose of Vistaril."

I do not dispute that at some point, and perhaps even during the examination by the physician, plaintiff denied an attempted suicide. This does not mean that there was no such attempt and that an experienced physician could not perceive that there had been a suicidal attempt even though the plaintiff denied it. Thus, in my view, the existence of the medical report raises a question of fact as to whether the plaintiff attempted suicide and whether this attempt was in some way related to the accident. If a trial were to reveal that an attempted suicide

can be causally related to the accident, I believe that plaintiff could recover.

I conclude that either the requirement of objectively manifested injuries should not apply in a case such as this because the Cassidy Court was not dealing with such a situation or I would conclude that the meaning of the term as applied to psychological illness has a different nature: allowing trained mental health experts to observe a plaintiff's injuries objectively, without the usual instrumentation associated with physical measurement of injuries. To this extent I disagree with the statement in Garris v Vanderlaan, 146 Mich App 619; 381 NW2d 412 (1985), that symptoms of a mental illness are purely subjective and do not constitute objectively manifested injury. See Judge Ravitz' dissent 146 Mich App at 627-628. The remaining question then, is the effect plaintiff's injuries may have had on her general ability to lead a normal life. While the physical impairments do not suggest a serious effect on plaintiff's ability to lead a normal life her attempted suicide, however, if causally related to the accident would take plaintiff's case beyond the Cassidy threshold. I am satisfied that an attempt to take one's life is a substantial interference with the ability to lead a normal life. I believe a factual dispute exists on the issue of causation and accordingly I would reverse the grant of summary disposition and remand for further proceedings.

/s/ John H. Shepherd