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STATE OF MICHIGAN
COURT OF APPEALS

OCT 18 1990

LINDSAY E. JOHNSON,
Plaintiff-Appellant,

v

No. 117426

ROBERT EARL LOUIS,
Defendant-Appellee.

Before: Danhof, C.J., and Cynar and Brennan, JJ.

PER CURIAM.

In this action, plaintiff, Lindsay E. Johnson, seeks damages for injuries suffered in an automobile accident with defendant, Robert Earl Louis, which occurred on January 31, 1982. The action was originally filed in Wayne Circuit Court on August 29, 1983. Defendant subsequently failed to comply with discovery, and on January 25, 1985, the circuit court entered an order granting plaintiff's motion for default, but reserving the issue of damages. Eventually, the case was remanded to 36th District Court, and trial before a jury began on July 25, 1988, solely on the damages issue. At the close of plaintiff's proofs, defendant moved for directed verdict on the basis that plaintiff had failed to prove a serious impairment of a body function, pursuant to MCL 500.3135(1); MSA 24.13135(1). The district court entered an order granting the motion on August 22, 1988, and the circuit court affirmed by order dated April 28, 1989. Plaintiff appeals to this Court by leave granted. We reverse.

Plaintiff testified that although he did not seek immediate medical attention, he did experience pain in his back and neck following the accident. As the week progressed, the pain in his back and neck began to worsen. On February 11, 1982, plaintiff went to see Dr. Richard Lutz, a chiropractic physician. At the time of the accident, plaintiff was a tool and die maker

at General Motor's Poletown plant which required some heavy lifting as part of the job. After the accident, plaintiff needed help in lifting heavy pieces at work. Because of "financial responsibilities" (plaintiff has one daughter), he continued to go to work with minimal leave time despite being "disabled" from work by Dr. Lutz. Whenever he experienced problems with his neck or back at work he would receive heat treatments in the plant's medical office.

The only expert to testify prior to the district court's grant of directed verdict was Dr. Lutz, plaintiff's treating physician. Dr. Lutz diagnosed plaintiff as having severe inter-ligamentous subluxation of the 4th, 5th and 6th cervical vertebrae and the 3rd and 5th lumbar vertebrae. The ligaments holding these vertebrae were ruptured and repaired themselves by forming scar tissue. Dr. Lutz testified that once the scar tissue has invaded the ligaments, they will never be as effective as before the injury, and the only treatment is to alleviate as much spasm and discomfort as possible. Although plaintiff's x-rays on his initial visit revealed no abnormalities, subsequent x-rays did reveal "increased abnormalities." Dr. Lutz testified that it was not unusual for such abnormalities to show up for several months or even a year after a trauma.

Plaintiff received treatment from Dr. Lutz over a span of about 2 1/2 years. In October of 1982, Dr. Lutz informed plaintiff that there was nothing more he could do for him. Plaintiff had reached the point of maximum rehabilitation, and additional care was not indicated. He advised plaintiff to return if needed.

On October 3, 1983, Plaintiff did return to Dr. Lutz and told him that his condition had worsened, that he had suffered no additional trauma, and that he had missed work intermittently. Thereafter, he received treatment until August of 1984, at which time Dr. Lutz again advised plaintiff that he

could not provide him with "100% relief," and that his remaining problems, which included loss of motion and minor spasms in the afflicted areas, would continue to persist as a chronic condition he would have to "deal with." Tests conducted on plaintiff's last visit to Dr. Lutz in August of 1984, indicated a reduction in range of motion of plaintiff's neck and lower back by 25%. Dr. Lutz advised plaintiff to avoid strenuous activity and certain sports, to lift as little as possible, and to use moist heat to treat continuing problems.

Plaintiff's mother also testified that since the accident she noticed that her son was experiencing pain, had a reduced activity level, and at times she would have to help him put on a jacket or shirt.

Viewing this evidence in a light most favorable to the plaintiff, we find a jury-submissible question of fact exists regarding whether plaintiff has sustained a serious impairment of a body function under the standard articulated in DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986). Although close, the question of weight and credibility was an issue for the fact finder to decide and not an issue to be decided as a matter of law by the court.

Consequently, the district court order granting defendant a directed verdict, and the circuit court order affirming that decision, are reversed. This case is remanded to the district court for a new trial on damages. We do not retain jurisdiction.

/s/ Robert J. Danhof
/s/ Walter P. Cynar
/s/ Thomas J. Brennan