STATE OF MICHIGAN
COURT OF APPEALS

JO AN MORRIS,

Plaintiff-Appellant,

v

JEFFREY DOOLITTLE,

Defendant-Appellee.

UNPUBLISHED

October 5, 1994

No. 157156
LC No. 87-2089-NO

Before: Corrigan, P.J., and Connor and T.G. Power,* JJ.

PER CURIAM.

After plaintiff had presented her proofs in a jury trial, the trial court granted defendant a directed verdict and issued an order of no cause of action. The trial court also imposed attorney fees and costs on plaintiff pursuant to MCR 2.405. Plaintiff appeals as of right, claiming a number of trial errors. We affirm in part and reverse in part.

This case arises from an accident which occurred in 1984 when defendant backed his vehicle into the rear of plaintiff's vehicle. Plaintiff was sitting in her parked vehicle at the time. In 1987, plaintiff sued defendant, alleging the accident caused her to suffer a herniated disc, referred to as a new cervical neck injury. Over the years, plaintiff has been involved in a number of traffic and pedestrian accidents, as well as assaults, resulting in a variety of injuries.

To support her allegation that the accident with defendant caused injury to her neck, plaintiff introduced the depositions of three of her treating physicians at trial. Plaintiff then moved to amend her complaint to allege an aggravation of a preexisting condition. However, the trial court determined that plaintiff had failed to introduce competent evidence of either a herniated disc or an aggravation of a preexisting condition. At that point, the trial court directed a verdict in favor of defendant.

One of plaintiff's physicians testified in his deposition that the accident with defendant caused plaintiff's neck injuries. However, the trial court determined that this witness lacked the necessary foundation for his opinion of causation because he was not familiar with specific characteristics of the accident that occurred. In addition, it is clear from the record that the doctor did not have an accurate medical history on which to base his opinion. Moreover, plaintiff was involved in other accidents after the accident at issue here, one of which resulted in plaintiff filing a lawsuit against another driver, alleging neck injuries. Because plaintiff presented no other evidence of causation, plaintiff's proofs on this element did not rise above mere conjecture. Accordingly, the trial court did not err when it granted defendant a directed verdict on the issue of causation. Berryman v K Mart, 193 Mich App 88, 92; 483 NW2d 642 (1992).

Plaintiff next argues that the trial court erred by granting defendant a directed verdict because plaintiff presented evidence that she suffered a serious impairment of an important body function. We

*Circuit judge, sitting on the Court of Appeals by assignment.

disagree. Plaintiff failed to establish that the accident at issue caused her neck injury or aggravated a preexisting condition, and failed to introduce evidence establishing a physical basis for any subjective complaints of pain and suffering. DiFranco v Pickard, 427 Mich 32, 74-75; 398 NW2d 896 (1986). As such, the trial court properly directed the verdict on her claim of serious impairment of an important body function.

Plaintiff also argues that because Michigan law does not require that the plaintiff prove a serious impairment of body function in order to recover wage loss damages, the trial court's denial of her claim was improper. Again, we disagree. While it is true that plaintiff need not show a serious impairment of body function, plaintiff failed to show that the accident at issue caused the injuries from which she claims her damages flowed. Ouellette v Kenealy, 424 Mich 83, 85-86; 378 NW2d 470 (1985). As stated supra, the trial court correctly determined that plaintiff failed to prove the accident in question caused her injury. Accordingly, the trial court did not err by granting defendant a judgment of no cause of action.

As for plaintiff's claim that the trial court erred in awarding costs and attorney fees to defendant, we agree in part. Plaintiff challenges the trial court's determination that defendant should receive his actual costs and attorney fees as sanctions for plaintiff's rejection of defendant's offer of judgment. The record reveals that on the same day defendant rejected the mediation award, he offered to stipulate to the entry of a judgement in the amount of $3,000.00. Plaintiff, however, failed to accept, reject, or make a counteroffer within the twenty-one days of defendant's offer as required by MCR 2.405(C)(1). A failure of a party to respond to an offer of judgment within the specified time period is deemed a rejection. MCR 2.405(C)(2)(b). Because plaintiff's rejection of defendant's offer of judgment followed defendant's rejection of the mediation award, the rules concerning sanctions pursuant to MCR 2.405 apply to the instant matter. MCR 2.405(E). Accordingly, the trial court did not err when it used the sanction rules pursuant to MCR 2.405 instead of the rules contained MCR 2.403.

In addition, we find that a reduction of the costs awarded defendant is warranted. Defendant claimed that $1,096.47 in general expenses and $784.00 in investigator expenses were recoverable. The offer of judgment rule only allows the recovery of actual costs. MCR 2.405(D)(3). "Actual costs" is defined as costs and fees taxable in a civil action. MCR 2.405(A)(6). The reasonable cost of any study that the trial court deems necessary for the preparation of one's case may be taxed under Michigan law. MCL 600.2421b(1)(b); MSA 27A.2421(2)(1)(b). The trial court determined that all costs were reasonable; consequently, the $784.00 investigator costs are properly recoverable.

However, not all of defendant's general expenses are recoverable. We find that the following general expenses are recoverable: (1) witness fees and mileage of $78.50, pursuant to MCL 600.2552(1); MSA 27A.2552(1); (2) a fee and mileage of $27.00 pursuant to MCL 600.2559(1)(g); MSA 27A.2559(1)(g) for servicing a subpoena; and (3) motion fees of $30.00 pursuant to MCL 600.2529(1)(g); MSA 27A.2529(1)(g). Accordingly, defendant should have been awarded only $132.50 in general expenses.

Plaintiff also claims that the trial court erred by allowing defendant to raise plaintiff's prior injuries and lawsuits after plaintiff specifically refused to waive her privilege to certain medical records. We disagree. We find that defendant did not violate plaintiff's privilege because defendant questioned plaintiff regarding her previous litigation history only after she testified in her case-in-chief about the issue. It is proper to cross-examine a witness on any matter testified to on direct examination. MRE 611(b). The trial court correctly overruled plaintiff's objection to defendant's line of questioning on plaintiff's litigation history. People v Lucas, 188 Mich App 554, 572; 470 NW2d 460 (1991). Moreover, plaintiff has effectively abandoned this issue on appeal by her failure to provide authority for her position. Price v Long Realty, Inc, 199 Mich App 461, 467; 502 NW2d 337 (1993).

Finally, plaintiff argues that the trial court erred in refusing to admit the deposition of her expert witness addressing her wage loss theory. This claim, too, is unpersuasive. In the instant case, plaintiff's expert had no competent evidence or recollection to testify on his opinion made in 1985. The trial court determined that the data upon which plaintiff's expert based his opinion had to be admitted into evidence. A trial court may require any facts and data upon which an expert opinion is based be in evidence. MRE 703; see McDonald v Stroh Brewery Co, 191 Mich App 601, 607; 478 NW2d 669 (1991). Because no factual record of plaintiff's wage loss could be established, the expert's opinion did not rise above mere speculation or conjecture. Under the circumstances, the trial court did not abuse its discretion in ruling the expert witness' deposition inadmissible.

Affirmed in part. Reversed as to general expenses and remanded for the entry of the correct amounts in accordance with this opinion.

/s/ Maura D. Corrigan
/s/ Michael J. Connor
/s/ Thomas G. Power