

STATE OF MICHIGAN  
COURT OF APPEALS

DAVID KROFT and LINDA KROFT,  
Plaintiffs-Appellees,

JUN 24 1986

-v-

No. 85780

KEVIN RAY KINES,  
Defendant-Appellant,

and

EATON COUNTY and EATON COUNTY  
ROAD COMMISSION,

Defendants.

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BEFORE: Allen, P.J., and MacKenzie and J.P. Swallow\*, JJ.

PER CURIAM

Defendant Kevin Ray Kines ("defendant") appeals, by leave granted, a circuit court order denying defendant's motion for summary disposition pursuant to MCL 2.116(C)(10). The dispositive issue on appeal is whether plaintiff Linda Kroft ("plaintiff") suffered a serious impairment of a body function. MCL 500.3135; MSA 24.13135. We find that she did not and reverse.

Plaintiff was injured in an automobile accident on August 4, 1981. Plaintiff was taken by ambulance to the hospital. X-rays revealed that plaintiff suffered two comminuted fractures of the humerus. Her arm was set in a cast. She remained in the hospital for three days.

As a result of her injuries, plaintiff was unable to do housework for the 2-1/2 months period her arm was in a cast. For a few months thereafter, she experienced some limitation in movement of her arm, but was able to do most housework. Plaintiff still experiences pain when washing walls or gardening, and is unable to pick up her sons, ages five and six. She is unable to crochet or knit for the periods she previously was able to crochet or knit because her arm gets tired. Plaintiff's physician

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

expects her to continue to have pain associated with arduous activity.

With these facts in mind, we examine the trial court's ruling that a jury question existed regarding whether plaintiff met the threshold statutory requirement for recovery of noneconomic loss under the No-Fault Act.

Under the Michigan No-Fault Act, a person remains subject to tort liability for noneconomic loss occasioned by his use, maintenance or operation of a motor vehicle only if the injured party has suffered death, serious impairment of body function or permanent serious disfigurement. MCL 500.3135; MSA 24.13135.

Where there is no factual dispute regarding the nature and extent of a plaintiff's injuries or when the factual dispute is not material to the determination of whether a plaintiff has suffered a serious impairment of body function, the trial court shall rule as a matter of law whether the threshold statutory requirement has been met. Cassidy v McGovern, 415 Mich 483, 502; 330 NW2d 22, 29 (1982). When considering the seriousness of the injury, the court should be mindful of the other threshold requirements for recovery of noneconomic loss, death and permanent serious disfigurement, and the legislative reasons for limiting the recovery for noneconomic losses; viz., prevention of overcompensation for minor injuries and reduction of litigation in automobile accident cases. Cassidy, supra.

At this state in its legal evolution, "serious impairment of body function" must be decided on a case-by-case basis. Cassidy, supra, 403. A few standards have developed, though, which will assist the courts. First, "impairment of body function" actually means "impairment of important body functions." Id., 504. Second, by its own terms, the statute requires that any impairment be "serious". MCL 500.3135(1); MSA 24.13135(1); Williams v Payne, 131 Mich App 403, 409; 346 NW2d

564, 569 (1984). Third, the section applies only to "objectively manifested injuries". Cassidy, supra, 505.

In determining whether there has been a serious impairment of an important body function, a court must apply an objective standard that looks to the effect of an injury on the person's general ability to lead a normal life. Cassidy, supra, 505. Recovery for pain and suffering under the act is not predicated on serious pain and suffering, but on injuries that affect the functioning of the body. Id. An injury need not be permanent to be serious, but permanency is relevant. Id., 505-506.

When we review the facts of this case in a light most favorable to plaintiff, Rizzo v Kretschmer, 389 Mich 363, 372; 207 NW2d 316 (1973), we agree that plaintiff sustained an arm injury that has definite objective manifestations. Further, it appears that the injury, for a period of 2-1/2 months, at least, impaired an important body function, the use of plaintiff's arm.

Nevertheless, we cannot find this impairment "serious" within the meaning of the statute. The injury did not cause and is not presently causing a significant impact on plaintiff's ability to live a normal life. Unlike the fractures in Cassidy, supra, or in Range v Gorosh (After Remand), 140 Mich App 712; 364 NW2d 686 (1984), cited by plaintiff, the injuries here did not affect plaintiff's very mobility. Further, she returned to her housework within 11 weeks of the accident. While we are not unsympathetic to the pain and inconvenience plaintiff now experiences, they do not affect her ability to lead a normal life. Williams v Payne, supra.

Because we find that the trial court erred in ruling on the merits of defendant's motion, we address plaintiff's claim that the trial court and this Court may not entertain the merits of defendant's claim because defendant failed to submit an affidavit with its motion for summary disposition. Unlike

procedure under the former rules, GCR 1963, 117.2(3), 117.3, an affidavit is not required for such a motion under the new rules, so long as "depositions, admissions, or other documentary evidence" set forth facts in support of the motion. MCR 2.116(C)(10), 2.116(G)(3)(a).

Because plaintiff David Kroft's cause of action is dependent on plaintiff Linda Kroft's right of recovery, we find it unnecessary to address defendant's claim that the trial court erred in denying summary disposition of David Kroft's cause of action.

The trial court's order denying defendant's motion is REVERSED. Plaintiffs' causes of action are dismissed.

/s/ Glenn S. Allen, Jr.  
/s/ Barbara B. MacKenzie  
/s/ Joseph P. Swallow