

SLV 11 *mod 4*

Order

Michigan Supreme Court
Lansing, Michigan

March 27, 2020

Bridget M. McCormack,
Chief Justice

159938

David F. Viviano,
Chief Justice Pro Tem

ROMEO WILSON,
Plaintiff-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 159938
COA: 342477
Kent CC: 16-008952-NI

DEBRA SUE GABITES and JORDAN GABITES,
Defendants-Appellees.

/

On order of the Court, the application for leave to appeal the June 18, 2019 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 27, 2020

Larry S. Royster
Clerk

t0323

STATE OF MICHIGAN
COURT OF APPEALS

18-04(5)

248-355-4141
Lindsey A Peck

UNPUBLISHED
June 18, 2019

ROMEO WILSON,

Plaintiff-Appellant,

v

DEBRA SUE GABITES and JORDAN GABITES,

Defendants-Appellees.

No. 342477
Kent Circuit Court
LC No. 16-008952-NI

Before: K. F. KELLY, P.J., and FORT HOOD and REDFORD, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals as of right the trial court's order granting defendants' motion for a directed verdict. For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

This case arises out of a traffic accident between plaintiff, a bicyclist, and defendant, Jordan Gabites, the driver of a vehicle owned and insured by her mother, defendant Debra Sue Gabites.¹ On September 23, 2015, plaintiff was riding his bicycle across the street in the crosswalk when the Gabites' vehicle made contact with the back end of his bike, causing him to flip over the bike. Plaintiff could not see the Gabites' vehicle because a dump truck blocked his view. In the police report, plaintiff was faulted for the accident, by concluding that he cut across the street on a red traffic light. Plaintiff disputed that narrative, contending that the police misidentified the direction he was traveling to reach that conclusion. Rather, he testified that the "walk" sign was displayed when he crossed the street. Plaintiff characterized the incident as a "freak accident," citing the fact that plaintiff and defendant shared the same date of birth.

On the contrary, defendant testified that she was stopped at a red traffic light when the light changed to green. After looking both ways, she started to drive when the garbage or utility

¹ The singular "defendant" refers to Jordan Gabites.

truck in the next lane paused or slowed down, but the change in pace did not give her cause for concern. Defendant kept driving and hit plaintiff with the car. She immediately slammed on the brakes, but plaintiff travelled over the hood, landing toward the passenger side of the car. Defendant testified that plaintiff was not bicycling in the crosswalk. She first saw plaintiff at the time of impact, but denied that she was travelling fast at the time. Defendant did not receive a ticket or citation for the accident, and she noted that the police report attributed fault to plaintiff. Defendant opined that there was nothing she could have done to avoid striking plaintiff.

At trial, plaintiff's testimony lacked focus. Nonetheless, he conveyed that he suffered injuries to his back, neck, head, jaw, and a tooth as well as suffered hearing loss, and he attributed them to the accident. However, in his deposition, he cited injuries to his back, left knee, right shoulder, head, and migraines. On redirect examination, plaintiff clarified that his current health issue was a lack of strength in his right arm and indicated that most of his other issues were resolved. However, plaintiff acknowledged suffering from other medical issues throughout the years and did not admit his medical records to demonstrate specific injuries were caused by the accident. Although he delineated a long list of injuries, plaintiff testified that he learned to manage pain through pressure points and worked out at a gym following the accident. Additionally, plaintiff's testimony regarding his pre and postaccident lifestyle was jumbled. He acknowledged that he began to receive disability payments a few years before the accident, but stated that he continued to perform odd jobs. Plaintiff gave no indication that he had to cease this work after the accident. The trial court granted defendants' motion for directed verdict, concluding that there was insufficient evidence to support the claim that plaintiff suffered a serious impairment of body function as a result of the accident. Plaintiff appeals this decision.

II. DIRECTED VERDICT²

Plaintiff seemingly contends the trial court improperly granted the defense motion for directed verdict because defendant admitted to striking plaintiff with the vehicle, he suffered injury, and a monetary verdict should have been rendered by the jury in light of his medical bills. Because plaintiff did not establish an objective manifestation of an important body function that affected his general ability to lead a normal life, the court properly granted the directed verdict.

This Court reviews a trial court's decision regarding a motion for a directed verdict de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). "When evaluating a motion for a directed verdict, a court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party." *Id.* "Directed verdicts are appropriate only when no factual question exists upon which reasonable minds may differ." *Id.*

² As an initial matter, we note that the content of plaintiff's brief does not comport with MCR 7.212(C), and plaintiff is held to the same standards as an attorney. *Totman v Royal Oak Sch Dist*, 135 Mich App 121, 126; 352 NW2d 364 (1984). Furthermore, a party may not merely declare a position and leave it to this Court to discover and rationalize the basis for the claim. *Southfield Ed Ass'n v Bd of Ed of Southfield Public Sch*, 320 Mich App 353, 379; 909 NW2d 1 (2017). Nonetheless, we reach the merits of the issue raised on appeal.

“Tort liability is limited under the Michigan no-fault act.” *Patrick v Turkelson*, 322 Mich App 595, 606; 913 NW2d 369 (2018). According to MCL 500.3135(1), “[a] person remains subject to tort liability for noneconomic 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.” In this case, plaintiff apparently claimed entitlement to noneconomic damages because he suffered serious impairment of body function as a result of the accident.

MCL 500.3135(5) defines “serious impairment of body function” as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” In *McCormick v Carrier*, 487 Mich 180, 195; 795 NW2d 517 (2010), the Michigan Supreme Court stated that three prongs are necessary to establish a “‘serious impairment of body function’: (1) an objectively manifested impairment (2) of an important body function that (3) affects the person’s general ability to lead his or her normal life.” The question whether an injured party has suffered a serious impairment presents a question of law for the court if there is no factual dispute surrounding the nature and extent of the person’s injuries or any factual dispute is immaterial to determining whether the standard was met. MCL 500.3135(2)(a); *McCormick*, 487 Mich at 190-191.

In this case, the trial court properly granted defendants’ motion for a directed verdict because even viewing the evidence in the light most favorable to plaintiff, see *Meagher*, 222 Mich App at 708, plaintiff failed to prove the three prongs necessary to establish serious impairment of body function. Specifically, plaintiff did not demonstrate that his injuries affected his general ability to lead a normal life. *McCormick*, 487 Mich at 200-202. He did not adequately compare his preaccident life with his postaccident life. Plaintiff acknowledged that he received disability benefits before the accident and performed odd jobs for money. However, he failed to delineate how the accident impacted his work. Plaintiff also did not offer any testimony regarding any activities that he did before the accident that he could no longer perform because of the injuries caused by the accident. Accordingly, even considering the evidence in plaintiff’s favor, see *Meagher*, 222 Mich App at 708, he failed to establish that any impairment as a result of the accident affected his general ability to lead his normal life. See *McCormick*, 487 Mich at 200-202. Therefore, the trial court properly granted defendants’ motion for a directed verdict.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood
/s/ James Robert Redford

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

Verdict
LJ APPA
PARK 10

ROMEO WILSON.

Case No. 16-08952-NI

Plaintiff,

Hon. Paul J. Sullivan

v

JORDAN GABITES, and
DEBRA SUE GABITES,

OPINION & ORDER
GRANTING DEFENDANTS'
MOTION FOR A DIRECTED
VERDICT

Defendants.

Appearances:

Jesse Nash (P79465)
GOWER REDDICK
Attorneys for Plaintiff
2526 Woodmeadow Drive SE, Suite A
Grand Rapids, MI 49546

Brigitte D. Chiroyan (P75780)
LAW OFFICES OF TERRANCE LYNCH
Attorneys for Defendants
1 Towne Square, Suite 470
Southfield, MI 48076

**OPINION & ORDER GRANTING DEFENDANTS' MOTION FOR A DIRECTED
VERDICT**

This opinion & order is issued following defendants' motion for a directed verdict on January 30, 2018. At that time, the Court explained on the record that the motion would be granted and reasons were given as to why. However, the Court indicated that the reasoning would be further set forth in a written opinion & order. For the reasons set forth below, as well as for the reasons already stated on the record, defendants' motion for a directed verdict is GRANTED and judgment is entered in favor of defendants.

I. FACTS AND BACKGROUND

This case arises from an accident on September 23, 2015, at the intersection of Fulton Street and Jefferson Avenue in Grand Rapids. Many of the underlying facts surrounding the accident are disputed, but plaintiff Romeo Wilson testified at trial that he was walking his bike across the crosswalk on Fulton that day when the "walk" signal changed to flashing and he got on his bike to hurry the rest of the way across while he still had the right of way. He claims that a car being driven by defendant Jordan Gabites then pulled up a bit too far and hit him in the crosswalk, causing him to fall off his bike. Plaintiff was then taken to the hospital and treated for injuries.

Plaintiff testified that he was in the hospital over the course of weeks, and pictures were admitted at trial showing him in a hospital bed with some scrapes, some bruising, and a neck brace. However, no medical testimony or medical records were received at trial.¹ Plaintiff described having various problems after the accident, including headaches and pain in his back and shoulder, but the testimony was relatively vague and scattered.

Aside from himself, the only other witness plaintiff called at trial was defendant Jordan Gabites, who testified regarding her version of the events leading to the accident. Plaintiff rested his case following her testimony. Defendants then moved for a directed verdict due to an alleged lack of evidence regarding negligence, causation, and serious impairment of body function. After hearing arguments regarding the motion, the Court found that there would be factual issues for the jury regarding negligence and causation, but plaintiff's claims failed as a matter of law due to a lack of evidence establishing serious impairment of body function. An explanation for that decision was given on the record at the time and this opinion & order is now being issued to supplement the reasoning for the decision as it relates to serious impairment of body function.

II. STANDARD OF REVIEW

“Motions for a directed verdict or JNOV are essentially challenges to the sufficiency of the evidence in support of a jury verdict in a civil case.” *Taylor v Kent Radiology*, 286 Mich App 490, 499 (2009). “A party is entitled to a directed verdict if the evidence, when viewed in the light most favorable to the nonmoving party, fails to establish a claim as a matter of law.” *Aroma Wines & Equip, Inc v Columbian Distribution Services, Inc*, 497 Mich 337, 345 (2015).

III. LAW & ANALYSIS

As relevant here, defendants argue plaintiff's claims fail as a matter of law because he failed to present sufficient evidence to establish serious impairment of body function. The Court agrees.

The no-fault act provides that “[a] person remains subject to tort liability for noneconomic 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.” MCL 500.3135(1). Plaintiff's claims in this case are based on an allegation of serious impairment of body function, and plaintiff had the threshold burden at trial to prove serious impairment of body function by a preponderance of the evidence in order to potentially be entitled to recovery. As defined in the no-fault act, “‘serious impairment of body function’ means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.” MCL 500.3135(5). The Michigan Supreme Court has held that “three prongs that are necessary to establish a ‘serious impairment of body function’: (1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions) (2) of an important body function (a body function of value, significance, or

¹ At one point during plaintiff's testimony, plaintiff's counsel sought to admit a stack of what was claimed to be plaintiff's medical records. However, defense counsel objected and the objection was sustained due to the rules regarding hearsay and authentication of business records. See MRE 803(6), 902(11).

consequence to the injured person) that (3) affects the person's general ability to lead his or her normal life (influences some of the plaintiff's capacity to live in his or her normal manner of living)." *McCormick v Carrier*, 487 Mich 180, 215 (2010).

Plaintiff immediately runs into problems in the first prong requiring an impairment to be "objectively manifested". As for this requirement, in cases involving subjective complaints of pain and suffering, such complaints are not enough on their own and "plaintiffs must introduce evidence establishing that there is a physical basis for their subjective complaints of pain and suffering" *McCormick v Carrier*, 487 Mich 180, 198 (2010) (internal quotation marks omitted). Medical testimony will generally, but not always, be required to establish that there is an objectively manifested impairment. *Id.*

In this case, plaintiff complained of headaches as well as pain in other areas, including his back and shoulder, after the accident. However, there is no evidence of an *objectively manifested* impairment. Photos from the hospital show plaintiff with bruising and scraping on his face at the time, but there is nothing in the record suggesting that the bruising and scraping were manifestations related to some impairment. Furthermore, the neck brace that appears in the photos also does not impact the result because a neck brace is a piece of medical equipment, not an objective manifestation of some impairment. The jurors had no medical records or medical testimony provided to them, and plaintiff's testimony regarding the nature of his injuries and impairments was scattered and vague. He also was not able to testify as to what doctors told him regarding his medical conditions (at least for purposes of the truth of any matters asserted). When plaintiff rested his case, the jury was left only with evidence of subjective complaints of pain and suffering along with some pictures showing scrapes and bruises that were not alleged to be manifestations of any impairment. Even when viewing all of the evidence in a light most favorable to plaintiff and giving him the benefit of all possible reasonable inferences, that is simply not enough to establish an objectively manifested impairment.

Moreover, any objectively manifested impairment would also need to be shown to be of an important body function and to affect plaintiff's general ability to lead his normal life. The testimony in this case left it unclear exactly what functions were impaired and how any particular impairment impacted plaintiff's ability to lead his life. There was also little testimony about regular activities that were a part of plaintiff's pre-accident lifestyle and what specifically changed after the accident. Thus, even if a jury were to reach the unsupportable conclusion that there were some kind of objectively manifested impairment, the jury would need to engage in even more speculation to tie that particular impairment to an important body function and then to find that such impairment was what really what impacted plaintiff's ability to lead his normal life (as opposed to any subjective complaints that were not shown to have a physical basis).

Respectfully, after considering the law along with the testimony and evidence presented at trial, defendants' motion for a directed verdict ought be and hereby is GRANTED. Plaintiff's claims fail as a matter of law because the jury was simply not given enough evidence to support a finding of serious impairment of body function.

Order

For the reasons set forth above, as well as those stated on the record following arguments addressing the motion on January 30, 2018, defendants' motion for a directed verdict is respectfully GRANTED and judgment is hereby entered in favor of defendants.

Plaintiff's original trial exhibits were given to the Court to address this motion. The Court is returning these exhibits to plaintiff's counsel for safekeeping by enclosing them with plaintiff's counsel's copy of this opinion & order.

This is a final order that closes the case.

PAUL J. SULLIVAN

Dated: February 5, 2018

Paul J. Sullivan, Circuit Judge (P24139)

**Additional material
from this filing is
available in the
Clerk's Office.**