

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-001200

04/20/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT  
C. Vigil  
Deputy

FILED: 05/04/2004

JACALYN PATTERSON

JACALYN PATTERSON  
PO BOX 67486  
PHOENIX AZ 85082

v.

BEN WILLIAMS, et al.

JONATHAN D SCHNEIDER

PRETRIAL CONFERENCE

8:30 a.m. This is the time set for Pretrial Conference. Plaintiff Jacalyn Patterson is present on her own behalf. Counsel Tim O'Connor for Jonathan Schneider is present on behalf of Defendant.

Court reporter Marmie Guimont is present.

After hearing argument,

IT IS ORDERED as follows:

1. Granting Defendants' motion in limine re insurance so that neither health insurance nor liability insurance or any kind of insurance will be mentioned by either party as it is irrelevant and prejudicial. Plaintiff may ask Christopher Williams or any party what they do for a living.
2. Granting Defendants' motion in limine re Christopher Williams and Kristine Williams financial standing as irrelevant and prejudicial.

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3. Granting Defendants' motion in limine re religion as irrelevant and prejudicial although if the door is opened by the defendants in any way, plaintiff can always say on the stand that she would not lie because of her personal belief system.

4. Granting, in part, Defendants' motion in limine re lost wages and diminished earning capacity. Plaintiff was involved in two accidents, one in August 1996 and another on June 1, 2000 which is the subject accident. For four years prior to the 6/1/00 accident she was unemployed. She has not worked in the sense of earning income since August 1996, the date of the first accident. Plaintiff wants to establish that when she was employed she earned \$100,000.00 a year and feels that she has lost earning capacity of at least \$350,000.00 but there is no proof thereof and it seems to be pure speculation. Plaintiff has never given any tax returns or wage stubs to establish the \$100,000.00 income.

The Court now grants Defendants motion concerning lost wages as no proof thereof was ever produced to Defendants.

With respect to diminished earning capacity, the Court will wait until it hears the evidence at the trial as Plaintiff contends she has a physician who will state that she has permanent injuries from the 6/1/00 accident and is unable to work because of it even to this date. The Court is concerned with this item of damage because there is no evidence of any capacity that she was capable of earning money at the time of the 6/1/00 accident; there is no disclosure of how she computes a diminished earning capacity; there is no computation of present day value; there is no vocational or economics expert to compute the value of her diminished earning capacity and how it is reduced to present value; there may not even be medical evidence showing any restriction on her activities but this is what the Court does not know and will reserve on the issue of diminished earning capacity until the Court hears the evidence at the trial.

5. The parties stipulate that the Court will reset this trial if it is not picked in case transfer by the 4/27/04 date.

Matter concludes.

L A T E R:

An instructive case for the trial judge is Mandelbaum v. Knutson, 11 Ariz. App. 148 (1970) which was a personal injury action which held that an injured Plaintiff need merely present evidence of her conditions permanency and that she had a capacity to earn and that would be sufficient to go to the jury. Diminution of the power to earn is based on such factors as Plaintiff's age, life expectancy, health and the like. Plaintiff need only show that the damage is permanent and then she need not show proof of wages actually earned nor must she show that she even was previously employed. The Court specifically holds there needs not be a pecuniary amount proven on this item of general damage. Loss of earnings on the other hand does require a specific amount of special damage to be pleaded and proved. Plaintiff may very well have

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enough to go to a jury here in sustaining a permanent loss of earning power. Loss of earning capacity can be presented to a jury to weigh all of the factors and they by experience and common sense can arrive at a proper monetary value without recourse to actual past earnings is Mandelbaum's holding. It states that all Arizona requires is for Plaintiff to show a permanent diminution of earning capacity by the Plaintiff's own testimony and his capacity to earn money. Thus a housewife who never earned any wages can receive compensation for loss of her capacity to earn the wages for her skills. In Mandelbaum there was a physician who testified that the injury was permanent and this will be required.