

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

JUNE LISA WHITE and JEFFERY WHITE,  
husband and wife,

UNPUBLISHED  
February 21, 2003

Plaintiffs-Appellants,

v

JOSEPH MARLIN WIER and JOSEPH F. WIER,  
jointly and severally,

No. 236000  
Macomb Circuit Court  
LC No. 99-003931-NI

Defendants-Appellees.

---

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

In this automobile negligence action, plaintiffs appeal as of right an order of the circuit court granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) on the no-fault tort threshold. MCL 500.3135. We reverse and remand for further proceedings.

On July 9, 1999, plaintiff June Lisa White sustained personal injuries as a result of a collision with defendants' vehicle. Defendants' van exited a gas station driveway and allegedly failed to yield the right-of-way to plaintiff's oncoming automobile. Plaintiffs allege negligence; defendants deny negligence and claim comparative negligence.

As a result of the collision, plaintiff June Lisa White sustained soft-tissue injuries and an oblique, nondisplaced fracture of her sternum. Mrs. White's husband, plaintiff Jeffery White, brings an action of loss of consortium.

On February 12, 2001, plaintiffs filed a motion for summary disposition on the issue of serious impairment of body function. In arguing that plaintiffs' motion should be denied, defendants asserted that there were genuine issues of material fact regarding the nature and extent of plaintiff's injuries. At the conclusion of a hearing held on March 12, 2001, the lower court denied, without explanation, plaintiffs' motion. Thereafter on April 25, 2001, defendants filed their motion for summary disposition on the basis of the threshold asserting that there were no genuine issues of material fact and defendants were entitled to judgment as a matter of law. In response, plaintiffs argued they were entitled to summary disposition or, in the alternative, that there were genuine issues of material fact with regard to the nature and extent of plaintiff's injuries. In an order and opinion dated July 19, 2001, the circuit court granted defendants' motion. Plaintiffs now appeal.

The no-fault automobile insurance act defines the threshold of serious impairment of body function as follows:

As used in this section, “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(7).]

Further, “absent an outcome-determinative genuine factual dispute, the issue of threshold injury is a question of law for the court.” *Kern v Blethen-Coluni*, 240 Mich App 333, 341-342; 612 NW2d 838 (2000); MCL 500.3135(2)(a).

In the present case, the lower court correctly concluded that plaintiff’s sternum fracture was an “objectively manifested” impairment because it was a medically identified injury or condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653;654 NW2d 604 (2002). However, the circuit court erred in concluding that there was no genuine factual dispute regarding whether plaintiff’s sternum fracture was an impairment of an important body function and whether it significantly affected plaintiff’s general ability to lead her normal life. In regard to these issues, the circuit court ruled:

Next, the Court considers whether plaintiff’s injuries impaired an important body function. Here, the record indicates that despite plaintiff’s injuries, she was able to work as a barmaid at least two nights a week, where she was “on her feet most of the time” and “carrying trays with four to five drinks.” See Exhibit C of defendants’ brief. Moreover, plaintiff is able to stay “pretty busy” taking care of her children and running errands all day. See Exhibit C of defendants’ brief. The Court is convinced there is no factual dispute that plaintiff’s limitations do not seriously affect important body functions.

Finally, the Court considers whether plaintiff’s impairment affects her general ability to lead her normal life. Here, as stated earlier, plaintiff was able to work, take of her children, and run errands all day. See Exhibit C of defendants’ brief. Furthermore, there is evidence that plaintiff went on at least one vacation to Myrtle Beach following the accident. See Exhibit D of defendants’ brief. Plaintiff also testified that although she is off work, no doctor has advised her not to return to work. See Exhibit E of defendants’ brief. The Court is persuaded there is no factual dispute that plaintiff’s impairment does not affect her general ability to lead her normal life.

First, we note that our review is hampered by the parties’ reliance on inadmissible evidence. Under MCR 2.116(G)(6), the evidence supporting or opposing a motion for summary disposition must be admissible documentary evidence in the form of depositions, affidavits, or other evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *SCC Associates, Ltd Partnership v General Retirement Systems of Detroit*, 192 Mich App 360, 363-364; 480 NW2d 275 (1991). In this action, however, both parties submitted unauthenticated medical records that contain multiple levels of hearsay. The depositions of plaintiff’s treating physicians were never taken.

The most important admissible evidence submitted to the lower court was plaintiff's affidavit. In her affidavit, plaintiff alleged that her objectively manifested injury affected her as follows:

4. As a result of the accident, I received an injury to my sternum. The nature of the injury was originally uncertain, but studies done on September 2, 1999, confirmed a vertical, obliquely-oriented fracture of my sternum.

5. For the first two weeks after the accident, I could not sit, stand, walk, eat, bathe, dress myself, or take care of my body. Until August 21<sup>st</sup>, I could not walk without help, and the only walking I could do was limited to a trip to the bathroom. I was unable to use the stairs without significant assistance until the end of August.

6. I was unable to lift my right arm past 15° for at least one month, and I was entirely unable to use the arm. As the month of August wore on, I began to have slowly increasing ability to move my right arm. I was able to bathe with assistance sometime in August 1999.

7. I was unable to sit up at all until August of 1999 and could not sit up without help until the last half of August.

8. I could not use my left arm at all until September and then only as was absolutely necessary.

9. I could not lift anything for six weeks after the accident. I could not touch or lift my children, including my baby son, until, literally, the end of 1999. I could not comfort him, and I often had to watch him while he cried to himself. He was teething, and I was unable to rub his gums or put a teething ring in his mouth. I could not hold him or my other children. I could not rub their backs, dress them, bathe them, feed them, or hug them. I needed child care every day.

10. I could not engage in sex for months after the accident.

11. I was unable to drive.

12. I was off work for over a year after the accident.

13. I was required to sleep sitting up for just under four months. I averaged two to three hours of sleep per night. I moved back to my bed on October 31, 1999, and continued to get only two to three hours of sleep per night. I still have trouble sleeping.

14. Attached are pertinent medical records of Dr. Russell C. Chavey, who was my treating physician. His notes document my inability to do many activities of daily living for a period of time after the accident.

15. I continued to suffer residual limitations in all of these activities throughout the year 1999. I continue, even at the present time, to be unable to

sleep through the night. I am unable to stand for more than twenty minutes without pain, and I am unable to sit for longer than an hour. I still suffer from numbness in the back of my head and severe back pain during the night.

While defendants dispute the allegations contained in plaintiff's affidavit<sup>1</sup> and claim that many of her limitations are "self-imposed," plaintiff's testimony establishes that there is an outcome-determinative genuine factual dispute regarding whether plaintiff's objectively manifested fracture impaired an important body function and whether the impairment significantly affected plaintiff's general ability to live her normal life. Contrary to the ruling of the lower court, "an injury need not be permanent to be serious." *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982); *Kern, supra* at 341. Further, in determining whether an objectively manifested impairment is "serious," the following nonexhaustive list of factors should be considered: the "extent of the injury, treatment required, duration of disability, and extent of residual impairment and prognosis for eventual recovery." *Id.*, citing with approval *Hermann v Haney*, 98 Mich App 445, 449; 296 NW2d 278 (1980), *aff'd* 415 Mich 483; 330 NW2d 22 (1982).

Because plaintiff's fractured sternum is an "objective manifested" injury and because genuine issues of material fact remain regarding whether an important body function was impaired and whether plaintiff's general ability to live her normal life was significantly affected<sup>2</sup>, the circuit court erred in granting summary disposition. In view of our disposition, it is unnecessary to address plaintiffs' argument of judicial estoppel.

In regard to plaintiffs' argument that the trial court also erred in refusing to grant summary disposition in plaintiffs' favor on the issue of negligence, we agree with the lower court that there are genuine issues of material fact on which reasonable minds can differ thus making summary disposition inappropriate. *White v Badalamenti*, 200 Mich App 434, 437; 505 NW2d 8 (1993).

---

<sup>1</sup> In their appellate brief, defendants admit for purposes of the motion for summary disposition that "[a]ccepting the evidence in the light most favorable to Plaintiffs, the substantial pain experienced after the accident as a result of the fractured sternum undoubtedly contributed to Plaintiff's limitations for a period of time – perhaps as much as two months." Without any admissible evidentiary support, defendants argue, as a matter of fact, that plaintiff's "functional limitations in her ability to reach with her arms and shoulders that lasted and progressed into December, 1999. . . . were clearly associated with her myosotis whiplash injury" [rather than plaintiff's sternum fracture]. The record evidence on this factual issue is simply inconclusive.

<sup>2</sup> As noted in *Kern, supra* at 340, the two issues are intertwined: "An important body function is a function of the body that affects the person's general ability to live [her] normal life. *Cassidy, supra* at 505."

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Richard Allen Griffin  
/s/ Donald S. Owens