

STATE OF MICHIGAN
COURT OF APPEALS

GINGER BURCHART,

Plaintiff-Appellant,

V

MICHAEL WARNER,

Defendant-Appellee.

UNPUBLISHED

October 2, 2003

No. 239205

Mason Circuit Court

LC No. 00-000498-NI

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this no-fault insurance case. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Two years after an automobile accident, plaintiff continued to have pain in her wrists, knees, left hip and shoulder. She also developed low back pain and began to have approximately two severe headaches a week. She returned to her regular work schedule, but the injuries have kept her from gardening, roller blading, canoeing, riding a bicycle, cross-country skiing, playing volleyball and soccer, and painting her house and stenciling. Sexual relations with her husband diminished about eighty percent because of pain in her hip and knees, and she was advised that she might have to delay getting pregnant until she more fully recovered from the injuries.

MCL 500.3135(7) provides:

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 a normal life.

The trial court found that the impairment was objectively manifested, but granted summary disposition because it concluded that the impairments did not *significantly* alter plaintiff's ability to lead a normal life.

Defendant asserts there was no objective manifestation, apparently arguing that this should have been an alternative basis for granting summary disposition. For an impairment to be objectively manifested, there must be a medically identifiable injury or condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). An October

25, 1999 MRI report showed minimal joint effusion of the right knee. In a September 12, 2001 report, a physician noted that “[t]he lumbar spine MRI scan shows only degenerative changes at the L4-L5 and L5-S1 discs without evidence of focal disc protrusion. There is broad-based bulging. . . . Her left shoulder MRI scan does show downsloping acromium process. . . .” These MRIs established physical bases for plaintiff’s complaints that were medically identifiable. Accordingly, there was an objective manifestation.

We conclude, however, that the trial court erred in reading an additional requirement into the statutory definition of serious impairment of body function. In *Kreiner v Fischer*, 251 Mich App 513, 518; 651 NW2d 433 (2002), vac and remanded 468 Mich 885 (2003), this Court held there was no basis for requiring that the impairment have a “serious” or “significant” affect on the person’s general ability to lead his or her normal life. The Supreme Court concurred, but remanded, stating:

In our judgment, both the circuit court and the Court of Appeals erred. Although a *serious* effect is not required, *any* effect does not suffice either. Instead, the effect must be on one's *general* ability to lead his normal life. [468 Mich 885 (emphasis in original).]

In *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 688-689; ___ NW2d ___ (2003), this Court concluded that an injury that impacts the person’s ability to work can affect one’s general ability to lead a normal life where the job plays a significant role in that person’s life. Further, the Court stated:

The Supreme Court’s remand order can be read to require that when considering a person’s “general” ability to lead his or her normal life, the focus must be on multiple aspects of the person’s life, i.e., home life, relationships, daily activities, recreational activities, and employment, and not solely on one area of the person’s life such as employment. However, our discussion . . . regarding the significance of employment is not contrary to such a position. The employment facet of a person’s life cannot be viewed in a vacuum; the inability to work necessarily impacts many aspects and areas of a person’s life outside of the job itself. There can be no doubt that the inability to work affects home life and relationships and creates and places monetary limits on daily and recreational activities. As such, an injury impacting employment can affect a person’s life in general. Moreover, injuries affecting the ability to work often, by their very nature, place physical limitations on numerous aspects of a person’s life. [*Id.*, at 689.]

In the present case, plaintiff’s employment was not adversely affected by her injuries. She continued her full-time work as an assistant manager and other employees covered the tasks that she was not able to perform. However, she was advised that she might have to delay getting pregnant until she started to feel better. Moreover, she was concerned she would have trouble getting pregnant since sexual relations with her husband had diminished about eighty percent because of pain in her hip and knees. The injuries also affected her ability to engage in various recreational activities.

The injuries affect plaintiff’s ability to lead her normal life. However, we must remand for a determination of whether they affect her *general* ability to do so. Because “the focus must

be on multiple aspects of the person's life, i.e., home life, relationships, daily activities, recreational activities, and employment, and not solely on one area of the person's life such as employment," *Kreiner (On Remand), supra*, at 689, the fact that her employment has not been adversely affected is not determinative. The extent to which continuous pain may affect her home life and relationships is not adequately reflected in the record. Also, while the record establishes that sexual relations are less frequent as the result of her injuries, it is not clear from the record the extent to which she previously engaged in the recreational activities that she can no longer do. In assessing the extent of the injury, a court may compare the plaintiff's lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000). If she rarely engaged in these activities, it could not be said that her current inability to do so has affected her general ability to lead her normal life. In contrast, if she frequently did all the things she can no longer do, one could conclude that the impairment has affected her general ability to lead her normal life.

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

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder