

STATE OF MICHIGAN
COURT OF APPEALS

JULI LYN MILLER,

Plaintiff-Appellant,

v

NORMAN LEROY ANDREWS, REEFER
PETERBILT, JOSEPH ARTHUR FORTIN, JR.,
and DAIMLER CHRYSLER,

Defendants-Appellees.

UNPUBLISHED
November 13, 2003

No. 241948
Oakland Circuit Court
LC No. 01-033589-NI

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendants, Norman Leroy Andrews, Reefer Peterbilt and Joseph Arthur Fortin, Jr., summary disposition in this third-party no-fault action. We affirm.

On appeal, plaintiff contends that the trial court erred in granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10), concluding that plaintiff had not suffered an objectively manifested impairment of an important body function and that her injury did not affect her general ability to lead her normal life. A trial court's decision regarding a motion for summary disposition is reviewed de novo. *Quality Products & Concept Co v Nagel Productions, Inc*, 469 Mich 362, 369; 666 NW2d 251 (2003). A motion for summary disposition based upon a lack of a material factual dispute tests the factual support for a claim. *DeSanchez v Dep't of Mental Health*, 467 Mich 231, 235; 651 NW2d 59 (2002). When testing this support, the pleadings, affidavits, depositions, admissions and other admissible evidence must be viewed in the light most favorable to the nonmoving party. *Quality Products & Concept Co, supra* at 369. Summary disposition is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The question of whether a plaintiff has suffered a serious impairment of a body function is a question of law for the court when (1) there is no factual dispute concerning the nature and extent of the person's injuries, or, (2) there is a factual dispute but it is not outcome determinative on the issue. MCL 500.3135(2)(a). Material or outcome-determinative factual disputes are matters for the jury. *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 682-683; ___ NW2d ___ (2003). The court must first determine if a factual dispute exists concerning the

nature and extent of a plaintiff's injuries. In regard to the nature of the injuries, the court needs to determine if there is a factual dispute over the existence of an objectively manifested impairment, and if so, then whether there is a factual dispute regarding the impairment of an important body function. In regard to the extent of the injuries, the court needs to determine if there is a factual dispute regarding the impairment's effect on the plaintiff's general ability to lead her normal life. MCL 500.3135(7); *Kreiner, supra* at 684. We note that a person's neck and back are important body functions. *Kreiner, supra* at 685 n 4 citing *Shaw v Martin*, 155 Mich App 89, 96; 399 NW2d 450 (1986).

The trial court found no objective evidence of an impairment. Moreover, assuming the existence of an objective verifiable physical impairment, the trial court found that plaintiff failed to establish that the injury affected her general ability to lead her normal life. Assuming the existence of a physical impairment, we nonetheless conclude that dismissal of plaintiff's claim was appropriate. At a minimum, plaintiff must present evidence that there has been a significant, as opposed to any, affect on a person's general ability to lead her normal life in order to show a serious impairment of a body function. See *Kreiner v Fisher*, 468 Mich App 884, 885; 661 NW2d 234 (2003), on remand, 256 Mich App 680, 681-682, 687. The term "general" can require a focus on multiple aspects of a person's life to determine the effect of an impairment on the person's lifestyle. *Id.*, 689; *Straub v Collette (On Remand)*, ___ Mich App ___; ___ NW2d ___ (Docket No. 236505, issued September 16, 2003), slip op, p 3. It is proper to compare a person's lifestyle before and after an accident to determine if her general ability to lead her normal life has been impaired. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Plaintiff only missed eight days of work as a result of the accident. These absences were not based upon a doctor's recommended work restriction, but were self-imposed. Plaintiff underwent physical therapy for less than a month and experienced an almost complete reduction in pain during that period. After completing physical therapy, plaintiff has not had work or activity restrictions imposed by a doctor. She claims that she has been unable to exercise or do household chores, but has provided no evidence to support this assertion. At most, plaintiff has showed that she has difficulty performing such tasks. Though plaintiff took a pay cut to find work that was less physically demanding in her field, this limitation was self-imposed as well. The only evidence plaintiff has provided to show the impact of her injuries on other areas of her life is an affidavit from Dr. Boggs, who makes the general legal conclusion that plaintiff has suffered a serious impairment of body function. We conclude that plaintiff has not met the required showing under *Kreiner, supra*, and therefore, the trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio