STATE OF MICHIGAN

COURT OF APPEALS

SHELLY ANN HOFFMAN,
and BRUCE HOFFMAN,

Plaintiffs-Appellants,

v

MEREDITH RANDS COLBURN,

Defendant-Appellee.

UNPUBLISHED
December 16, 2003

No. 242082
Oakland Circuit Court
LC No. 01-032179-CK

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

PER CURIAM.

Plaintiffs appeals by right from an order granting defendant's motion for summary disposition under MCR 2.116(c)(10). We reverse and remand for further proceedings.

Plaintiff, Shelly Hoffman, was injured in a motor vehicle accident when the car defendant was driving crossed over the center-line and struck plaintiff's car head on.[1] The trial court granted defendant's motion for summary disposition on the grounds that plaintiff had failed to present sufficient evidence that her general ability to live her normal life was "significantly altered."

Plaintiff maintains that the trial court applied the wrong legal standard. Defendant maintains that while the trial court may not have been precise in its articulation of the standard it applied to this case, a review of the record leads to the single conclusion that summary disposition was properly granted. We review a trial court's decision regarding summary disposition de novo. *Auto Club Group Ins Co* v *Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The legislature defines a 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." MCL 500.3135(7). Our inquiry is twofold: (1) is there an objective

[1] Hereafter plaintiff in the singular refers to Shelly Hoffman.

manifestation of impairment and; and, if so, (2) does this injury affect the injured party's "general ability to lead a normal life?" Here, plaintiff's MRI revealed that she has a large herniated disk that is impinging a nerve root. Plaintiff therefore established an objective manifestation of an injury to an important body function. This case therefore turns on whether plaintiff's back injury affects her general ability to lead her normal life.

Our Supreme Court recently observed that "the effect [of the impairment] must be on one's *general* ability to lead his (or her) normal life." *Kreiner v Fischer*, 468 Mich 884, 884-885;664 NW2d 212 (2003), (emphasis in original). The Supreme Court, in its remand order, determined it was error for the lower courts to require a "*serious* effect" on "one's *general* ability to lead his (or her) normal life." *Id.* (emphasis in original).

In the present case, it appears that the trial court imposed a higher burden on plaintiff than is required by the plain language of the statute.[2] The trial court determined that plaintiff failed to submit evidence illustrating that her life was "significantly altered" following the car accident. This conclusion is inconsistent with the statute and is inconsistent with the Supreme Court mandate in *Kreiner*. The trial court erred when it required plaintiff to show her ability to lead her normal life was "significantly altered." Plaintiff was merely required to show that her injuries had an affect on her "general" ability to live her life. Because the trial court imposed a higher burden than is required by the plain language of the statute, we remand this case to the trial court for further proceedings, including consideration of whether plaintiff's impairment affects her general ability to lead her normal life.[3]

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

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Pat M. Donofrio

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[2] Within the order granting defendant's motion, the trial judge twice used the words "significantly altered" when referring to the ability of plaintiff to generally live her life normally.

[3] Our Supreme Court has recently granted leave to appeal *Kreiner v Fischer (On Remand)*, 256 Mich App 680; ___NW2d ___ (2003), lv gtd, ___Mich ___ (Docket No. 124120, decided November 6, 2003).