

STATE OF MICHIGAN
COURT OF APPEALS

EVELYN CRITCHETT,

Plaintiff-Appellant,

v

JONATHON CRITCHETT,

Defendant-Appellee.

UNPUBLISHED

October 19, 2004

No. 248148

Muskegon Circuit Court

LC No. 02-041489-NI

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order that granted summary disposition in favor of defendant in this automobile negligence case, and we affirm.¹

Plaintiff argues that the trial court erred when it granted summary disposition in favor of defendant under MCR 2.116(C)(10) because there was a genuine issue of material fact with respect to whether she suffered a serious impairment of body function. A grant of summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Peden v Detroit*, 470 Mich 195, 200-201; 680 NW2d 857 (2004). Furthermore, the facts are considered in the light most favorable to the nonmoving party. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

Michigan's No-Fault Automobile Insurance Act ("the no-fault act") generally abolishes tort liability based on the use of a motor vehicle. MCL 500.3135(1) and (3). However, a person remains subject to tort liability caused by his or her use of a motor vehicle where an injured person suffered a "serious impairment of body function." MCL 500.3135(1). MCL 500.3135(7) defines "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."

In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), our Supreme Court provided the proper application of the statutory definition of "serious impairment of body function" provided by MCL 500.3135(7). From principles articulated in that opinion, we conclude that plaintiff has not established that the trial court erred in granting defendant's motion for summary

¹ This case is being decided without oral argument pursuant to MCR 7.214(E).

disposition because she has not shown that she introduced evidence of an objectively manifested impairment of an important body function that affected her general ability to lead her normal life.

Plaintiff argues that she presented objective medical evidence of degeneration of her spine. Assuming, for purposes of discussion, that this is accurate and that there was sufficient evidence of a causal link between the accident and this degeneration, by the plain language of MCL 500.3135(7), plaintiff must still establish that such injuries impaired an important body function and affected her general ability to lead her normal life. As we will explain in greater detail below, we conclude that plaintiff has failed to do so.

Plaintiff says that, according to her own deposition testimony, she used a walker after the accident. But she does not cite, and we have not found, record evidence that plaintiff had a medical condition that required her to use a walker or that a medical professional instructed her to use a walker as a result of the accident. Thus, plaintiff has not established that she suffered an objectively manifested impairment of an important body function based on her use of a walker because her subjective complaint of having to use a walker was not medically documented. See *Kreiner, supra* at 132 (subjective complaints lacking medical documentation are insufficient to establish an objectively manifested impairment of an important body function). Similarly, plaintiff refers to her own deposition testimony as indicating that her left eye was swollen so that she could hardly see out of it for a period of several days to a week and that her vision in that eye was still not as good as in her right eye. However, she does not cite, and we have not found, record evidence of vision testing or other medical documentation of an impairment of her eyesight. Her subjective complaints of impaired vision are insufficient to establish an objectively manifested impairment of an important body function. Further, any swelling to only one eye that lasted at most for a week cannot be considered to have affected plaintiff's general ability to lead her normal life because it was not "of sufficient duration to affect the course of [her] life." *Id.* at 135.

Likewise, plaintiff refers to her deposition testimony as evidence that she could not perform certain activities such as preparing meals and grocery shopping which she did before the accident. However, plaintiff has not shown that she was instructed by a medical professional to avoid such activities. Again, plaintiff's subjective complaints lacking medical documentation are insufficient to establish an objectively manifested impairment of an important body function. *Kreiner, supra* at 132. Furthermore, self-imposed restrictions, as opposed to restrictions imposed by a physician, based on real or perceived pain do not establish a "residual impairment" that might constitute evidence of an affect on a plaintiff's general ability to lead his or her normal life. *Id.* at 133-134 & n 17.

Affirmed.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell