

STATE OF MICHIGAN  
COURT OF APPEALS

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JOAN HOOKS-POLK,

Plaintiff-Appellant,

v

JAMES ANTHONY BLAIR and KUDAR  
SASTRY MURALL,

Defendants-Appellees.

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UNPUBLISHED

October 26, 2004

No. 245562

Wayne Circuit Court

LC No. 01-112729-NI

AFTER REMAND

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10) in this automobile negligence action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action seeking damages for injuries sustained in an automobile accident. Defendant moved for summary disposition on the basis that plaintiff's injuries did not meet the "serious impairment of body function" threshold contained in MCL 500.3135(1). The trial court agreed and granted defendants' motion. Plaintiff appealed to this Court, and we remanded the case to the trial court for further factual findings. The proceedings on remand have since been concluded. The trial court once again ruled that plaintiff failed to meet the "serious impairment of body function" threshold contained in the no-fault act.

We review de novo a trial court's decision to grant summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party, and summary disposition is appropriate if there is no genuine issue with regard to any material fact. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

A person is subject to tort liability for automobile-related negligence if the injured person "suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A serious impairment of body function is defined 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). Whether a person suffered a serious impairment of body function is a question of law for the court if there is no factual dispute about the nature

and extent of the plaintiff's injuries or if there is a factual dispute but it is not material in determining whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a).

The trial court found that there *was* a factual dispute about the nature and extent of plaintiff's injuries but ultimately concluded that it was not material in determining whether plaintiff suffered a serious impairment of body function. See, e.g., *Kreiner v Fischer*, 471 Mich 109, 136 n 21; 683 NW2d 611 (2004) ("even assuming that all plaintiff's [disputed] allegations concerning the nature and extent of his injuries are true, we conclude that plaintiff has still not suffered a 'serious impairment of body function'"). The trial court stated that plaintiff's "ability to perform her sedentary job has remained largely unaffected" by the automobile accident. It further stated that, while plaintiff's recreational activities and her ability to perform household chores were somewhat impacted by the accident, the impact was not significant. The court concluded that "the restrictions on Plaintiff's life-style have not been extensive enough to meet the no-fault threshold for attaining [sic] non-economic damages."

We find no basis on which to reverse the trial court's ruling. Indeed, "even assuming that all plaintiff's [disputed] allegations concerning the nature and extent of [her] injuries are true . . . plaintiff has still not suffered a 'serious impairment of body function.'" *Id.* In *Kreiner*, the Supreme Court stated:

Determining whether [an] impairment affects a plaintiff's "general ability" to lead his normal life requires considering whether the plaintiff is "generally able" to lead his normal life. If he is generally able to do so, then his general ability to lead his normal life has not been affected by the impairment.

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[T]he objectively manifested impairment of an important body function must affect the *course* of a person's life. . . . Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's "general" ability to lead his normal life has not been affected and he does not meet the "serious impairment of body function" threshold. [*Id.* at 130-131 (emphasis in original).]

Here, plaintiff alleged that, because of her automobile accident, she cannot travel in a car for more than an hour, do any "long distance walking," stand for over five minutes, or climb stairs. She testified that she can no longer play with her grandchildren in her backyard and that she can no longer take them to Cedar Point because of her inability to be in a car for long periods. She alleged that she can no longer have her hair styled regularly at a beauty salon because the movements required at the salon cause dizziness for her, and she stated that her injuries forced her to take one semester off from her studies at school.

In *Kreiner*, the Court stated the following in evaluating the impact of plaintiff Kreiner's injuries on his life:

Kreiner states that he can no longer stand on a ladder for longer than twenty minutes, can no longer lift anything over eighty pounds, and was forced to limit his workday to six hours because he can no longer work eight-hour days. Kreiner does not contend, however, that these limitations prevent him from performing his job. He also has difficulty walking more than a half mile without resting and can no longer hunt rabbits, although he continues to hunt deer.

Looking at Kreiner's life as a whole, before and after the accident, and the nature and extent of his injuries, we conclude that his impairment did not affect his overall ability to conduct the course of his normal life. While he cannot work to full capacity, he is generally able to lead his normal life. A negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life. [*Kreiner, supra* at 137.]

Here, plaintiff testified (despite her allegations on appeal that her inability to remain in a car for long periods has negatively affected her ability to work) that she missed only two or three weeks and additional number of "days here and there" of work because of the accident.<sup>1</sup> The work she missed does not automatically mean that the accident affected her general ability to lead her normal life. Indeed, plaintiff's missed work is comparable to – or even less significant than – Kreiner's having to "limit his workday to six hours because he can no longer work eight-hour days." *Id.* Also, while plaintiff may not be able to take her children to Cedar Point or play with them in the backyard, the nature and extent of her injuries surely do not prohibit her from engaging in *some* type of activities with them. Plaintiff testified that her grandchildren do not "come [and spend weekends with her] as much as they used to come," implying that they do still spend some weekends with her. This is somewhat comparable to the situation in *Kreiner*, where the plaintiff "can no longer hunt rabbits, although he continues to hunt deer." *Id.* In other words, certain of plaintiff's activities have been altered or curtailed, but not eliminated from her life. Moreover, plaintiff testified that she cannot do any "long distance walking," implying that she can still do some walking. Again, this is comparable to *Kreiner*, in which the plaintiff "has difficulty walking more than a half mile without resting."

Like in *Kreiner*, the restrictions mentioned above, as well as the additional lifestyle restrictions cited by plaintiff, simply do not "affect [plaintiff's] overall ability to conduct the course of [her] normal life." *Id.* While some impact on plaintiff's life is apparent, the impact is not sufficient to meet the threshold required under the no-fault act. Plaintiff can work full-time, she can visit with her grandchildren, she can walk, she can use the elevator (instead of the stairs) at her school, and she can prepare at least some food for family potlucks, even if she can no longer cook an entire meal for holiday celebrations. The trial court correctly held that plaintiff

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<sup>1</sup> With regard to driving, plaintiff testified at her deposition that nobody, at that point, had restricted her from driving. As stated in *Kreiner, supra* at 133, n 17, "[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish [the extent of any residual impairment]."

failed to meet the threshold for tort liability under the no-fault act and that summary disposition for defendants was appropriate.

Affirmed.

/s/ Jane E. Markey  
/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter