

STATE OF MICHIGAN  
COURT OF APPEALS

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BUNNY LANE PATENGE,

Plaintiff-Appellant,

v

ESTATE OF GORDON D. KNIGHT,

Defendant-Appellee.

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UNPUBLISHED  
December 21, 2004

No. 238893  
Ingham Circuit Court  
LC No. 00-091490-NI

ON REMAND

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Plaintiff in this no-fault action appeals as of right from the December 14, 2001 order granting defendant's motion for summary disposition. On March 11, 2003, after evaluating this appeal without oral arguments pursuant to MCR 7.214(E), we issued an unpublished per curium opinion reversing the trial court's order and remanding for trial.<sup>1</sup> But in lieu of granting defendant leave to appeal, our Supreme Court has remanded this case to us for reconsideration in light of its recent decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). Following reconsideration, we now affirm.

Plaintiff brought this action for noneconomic damages, asserting that neck and shoulder injuries incurred in a motor vehicle accident constituted a serious impairment of body function. The trial court found that her injuries did not affect plaintiff's general ability to lead her normal life, and granted summary disposition to defendant. We review de novo a trial court's grant or denial of summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Under MCL 500.3135 a person remains subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. As used in this section, "serious impairment of body function" means "an objectively manifested impairment of an

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<sup>1</sup> Judge Kelly dissented and would have affirmed.

important body function that affects the person's general ability to lead his or her normal life.” MCL 500.3135(7).

In *Kreiner, supra*, 130-134, our Supreme Court provided courts with a framework for determining whether a plaintiff meets the serious impairment threshold. First, we must determine whether a factual dispute exists “concerning the nature and extent of the person's injuries; or if there is a factual dispute, that it is not material to the determination whether the person has suffered a serious impairment of body function.” *Id.*, at 131-132. If there are material factual disputes, courts may not decide the issue as a matter of law. In the instant case, no material question of fact exists regarding the nature and extent of plaintiff’s injuries. Rather, defendant merely contends that plaintiff’s injuries have not affected her ability to lead her normal life. Consequently, we decide the issue as a matter of law. *Id.*, at 132.

Where courts decide the issue as a matter of law, they must then go on to the second step in the analysis and determine whether “ an ‘important body function’ of the plaintiff has been impaired.” *Kreiner, supra*, at 132. Our supreme Court explained as follows:

It is insufficient if the impairment is of an unimportant body function. Correspondingly, it is also insufficient if an important body function has been injured but not impaired. If a court finds that an important body function has in fact been impaired, it must then determine if the impairment is objectively manifested. Subjective complaints that are not medically documented are insufficient. [*Id.*]

Here, objective medical evidence exists to show that plaintiff suffered injuries to her neck and shoulders. Because we find that these injuries affect several of plaintiff’s important body functions, we proceed to the final step of the analysis.

Where a court finds an objectively manifested impairment of an important bodily function, “it then must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Kreiner, supra*, at 132. It must examine the plaintiff’s life before and after the accident and objectively determine whether any change in his lifestyle “has actually affected the plaintiff’s ‘general ability’ to conduct the course of his life.” *Id.*, at 132-133. “Merely ‘any effect’ on the plaintiff’s life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff’s ‘general ability’ to lead his life.” Our Supreme Court provided a non-exclusive list of objective factors that may be used in making this determination. These factors include:

- (a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery. [*Id.*, at 133.]

In regard to residual impairments, the Court noted, “Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point.” *Id.*, at n 17.

In each of the cases before the Court in *Kreiner, supra*, at 134, 136, the sole issue concerned whether the plaintiffs impairments affected their general ability to lead their lives.

The first plaintiff, Daniel Straub, suffered an injury to his non-dominant hand. In determining whether this affected his ability to generally “lead his preaccident life” the Court considered his functional abilities and activities. *Id.*, at 134-135. The Court noted that Straub missed eight full weeks of work and then worked twenty-five hours per week for three weeks before returning to work full-time. *Id.* at 135. Additionally he did not operate his meat processing shop during deer hunting season and, regarding his weekend job as a musician, he missed fifteen to twenty shows playing his bass guitar. *Id.* The Court found that Straub’s injuries were not extensive, his recuperation was short, and the effect of the injury on a bodily function was not pervasive. *Id.* It held that Straub’s temporary limitations did not affect his “general ability” to lead his life and therefore, “failed to satisfy the ‘serious impairment of body function’ threshold for recovery of noneconomic damages.”

Similarly, the Court found that the injuries that the second plaintiff, Richard Kreiner, suffered to his lower back, hip, and leg failed to meet the statutory requirements. *Kreiner, supra*, at 137. It noted that, with the possible exception of roofing work, he continued to be able to work as a self-employed carpenter. *Id.* Although Kreiner stated that he could no longer stand on a ladder for more than twenty minutes, lift anything over eighty pounds, or work more than six hours a day, these limitations did not prevent him from performing his job. *Id.* The Court further noted that, although Kreiner has difficulty walking more than a half mile without resting and can no longer hunt rabbits, he continues to hunt deer. *Id.* After examining Kreiner’s life before and after the accident and looking at the extent and nature of his injuries, the Court concluded that “his impairment did not affect his overall ability to conduct the course of his normal life.” *Id.*

Like those suffered by Straub and Kreiner, the impairment suffered by plaintiff in the instant case has not affected her general ability to lead her normal life. While plaintiff has not gone on her annual camping or skiing trips since the accident, these constitute self-imposed restrictions. Other than stating she should not generally lift items over twenty pounds, her doctors have not placed any restrictions on her activities. Although plaintiff testified that she misses two or three days of work per month due to headaches and back pain, she continues to work full-time as a secretary, generally putting in a nine hour day. Since the accident plaintiff’s husband has done the majority of the cleaning, but plaintiff still cooks and does some laundry. Further, although she has to get up and stretch during movies and has difficulty riding in a car for more than an hour or an hour-and-a-half at a time, this does not constitute a significant change in her normal life. Consequently, we find that plaintiff has not satisfied the “serious impairment of body function” threshold for the recovery of noneconomic damages set forth in MCL 500.3135.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra