

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DENISE MCMILLAN, Individually and as Next  
Friend of ASHLEY MCMILLAN,

Plaintiff-Appellant,

v

ROBERT ALAN MACLACHLAN,

Defendant/Counter Defendant-  
Appellee,

and

FAITH MACLACHLAN,

Defendant-Appellee,

and

RUZON, INC., d/b/a SHAKERS SPORTS  
SALOON,

Defendant/Counter Plaintiff-  
Appellee,

and

V & V ENTERPRISE OF MICHIGAN, INC., d/b/a  
BIGGS BAR AND GRILL,

Defendant-Not Participating.

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Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

UNPUBLISHED  
March 8, 2005

No. 250122  
St. Clair Circuit Court  
LC No. 02-000440-NI

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants-appellees. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This action arises from an automobile accident in which a vehicle occupied by plaintiff collided with a vehicle operated by defendant Robert MacLachlan. Plaintiff filed suit against Robert MacLachlan and defendant Faith MacLachlan, the alleged owner of the vehicle, seeking damages for injuries allegedly sustained in the accident. Plaintiff also pursued a dramshop claim against defendant Ruzon, Inc. The MacLachlans, with Ruzon's concurrence, moved for summary disposition under MCR 2.116(C)(10), asserting that plaintiff's alleged injuries did not meet the no-fault threshold for a serious impairment of a body function under MCR 500.3135. The trial court agreed and granted the motion.

On appeal, plaintiff argues that an injury to her ankle constituted a serious impairment of a body function.

We review de novo the trial court's grant of summary disposition under MCR 2.116(C)(10), which tests the factual support for a claim. *DeSanchez v Dep't of Mental Health*, 467 Mich 231, 235; 651 NW2d 59 (2002). If there is no factual dispute concerning the nature and extent of a person's injuries, or if there is a factual dispute that is not material to the determination whether a person suffered a serious impairment of a body function, a court may decide the issue as a matter of law. MCL 500.3135(2)(i) and (ii).

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). An objectively manifested impairment requires proof of a medically identifiable injury or a condition with a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). In assessing a plaintiff's "general ability" to conduct a normal life, "a court should engage in a multifaceted inquiry, comparing the plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of plaintiff's overall life." *Kreiner v Fisher*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). The court must objectively analyze whether any difference between the plaintiff's pre- and post-accident lifestyles actually affected the plaintiff's "general ability" to conduct the course of her life. *Id.* at 133. The nonexhaustive list of factors to consider are: "(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.* Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain, are insufficient to establish a residual impairment. *Id.* at 133 n 18.

Upon de novo review, we find no material factual dispute regarding the nature and extent of plaintiff's ankle injury. Although the ankle injury was objectively manifested by a CT scan, the temporary limitations on plaintiff's life immediately after the accident do not satisfy the "serious impairment of body function" threshold. Plaintiff's fractured ankle was placed in an air cast, with weightbearing to tolerance instructions. Plaintiff returned to her part-time job in a school kitchen approximately 5-1/2 weeks after the accident, and thereafter successfully obtained full-time employment with a new employer in February 2002. Although plaintiff claimed that she needed the assistance of family members when her ankle was first placed in an air cast,

looking at the totality of the circumstances, plaintiff's post-impairment life was not so different that her "general ability" to conduct the course of her normal life was affected.

Nor are we persuaded that the evidence regarding plaintiff's spinal injury affords a basis for finding a serious impairment of a body function. Even assuming that plaintiff could causally link her spinal condition to the motor vehicle accident, as treated immediately following the accident in 2001 or reported anew to doctors in February 2002, the evidence failed to support an inference that the impairment affected plaintiff's general ability to conduct the course of her normal life. The fact that some activities might have been affected is insufficient to satisfy the statutory standard. *Kreiner, supra* at 137.

Finally, plaintiff's claim that additional hand and arm injuries, including carpal tunnel syndrome, were caused by the motor vehicle accident is not properly before us because these alleged injuries were not alleged in plaintiff's second amended complaint and were not addressed by the trial court. Indeed, the trial court indicated that the issue whether plaintiff should be granted leave to amend her complaint to allege these additional injuries was not properly before it and, "[i]f you want to have that other considered, you can either stipulate with the attorneys that are present, or you can simply wait and see what happens . . . ." Having failed to adequately address her unpleaded claim, we need not address it. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). In passing, we note that an amended complaint to allege these injuries appears futile based on the evidence. Hence, appellate relief is not warranted. MCR 2.116(I)(5); *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello