

STATE OF MICHIGAN
COURT OF APPEALS

DONNA MARGARET REID,
Plaintiff-Appellant,

UNPUBLISHED
May 12, 2005

v

ANTHONY CHRISTOPHER CAVATAIO,
Defendant-Appellee,

No. 244615
Macomb Circuit Court
LC No. 2001-000975-NI

ON REMAND

and

THOMAS CAVATAIO, d/b/a WOLVERINE
TEXTURES,
Defendant.

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

This case arose out of an automobile accident that occurred in November of 2000. In that accident, plaintiff sustained non-displaced rib and sternal fractures, and subsequently experienced back and leg pain that limited her ability to work and to engage in other activities. She filed suit alleging that her injuries constituted a serious impairment of body function. Defendant sought summary disposition pursuant to MCR 2.116(C)(8) and (10) and the trial court granted the motion under MCR 2.116(C)(10).¹ Plaintiff appealed the trial court's grant of summary disposition. This Court reversed the trial court's grant of summary disposition, because we determined that a genuine issue of material fact existed as to whether plaintiff's preexisting conditions were exacerbated by the accident and whether plaintiff's injuries

¹ Although the trial court stated that it was granting the motion under both MCR 2.116(C)(8) and (C)(10), it stated that it was granting the motion because it was "satisfied that no genuine issue of material fact over which reasonable minds could differ remains." Furthermore, it is evident that the trial court looked beyond the pleadings in making its determination, hence, this Court will consider the motion granted pursuant to MCR 2.116(C)(10). *DeHart v Lunghamer Chevrolet*, 239 Mich App 181, 184; 607 NW2d 417 (1999).

constituted a serious impairment of an important body function. See *Reid v Cavataio*, unpublished opinion per curiam of the Court of Appeals, issued April 20, 2004 (Docket No. 244615). Defendant then appealed to our Supreme Court, which vacated this Court's April 20, 2004 opinion, and remanded the case back to this Court for reconsideration in light of the decision rendered in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). See *Reid v Cavataio*, 472 Mich 871; 693 NW2d 814 (2005). In light of this decision, we now affirm the trial court's original grant of summary disposition.

This Court reviews de novo the grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id.* at 120.]

When the trial court granted defendant's motion for summary disposition, it stated,

In this case, the Court is not convinced that plaintiff's impairments are the result of the vehicle accident, nor do they rise to the level of serious impairment of body function sufficient to recover under MCL 500.3135. The Court is satisfied that plaintiff's condition is a pre-existing degenerative spinal condition, unrelated to the accident.

The trial court's statement that "it is not convinced" that plaintiff's injuries were the result of the automobile accident or that those injuries rise to the level of a serious impairment of a body function suggests that the trial court held plaintiff to a higher standard of proof than required by MCR 2.116(C)(10). Plaintiff was not required to *convince* the trial court that her injuries were caused by the accident or that they rose to the level of a serious impairment of a body function. Plaintiff need only have presented sufficient evidence, when considered in a light most favorable to her, to create a material fact issue. *Maiden, supra* at 120. However, the trial court's erroneous standard will not warrant reversal if it came to the correct result. *Gleason v Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

Plaintiff's physician testified in his deposition that plaintiff suffered sternal and rib fractures as the result of the accident. He also stated that it was likely that an occult fracture in the symphysis pubis region on the right side was the result of the accident. Furthermore, he testified that plaintiff's compression fracture was impacted by the accident and that the symptoms were likely "ramped up" as a result. Hence, plaintiff clearly presented sufficient evidence to create a fact issue regarding the issue of causation and the trial court erred in finding otherwise. However, notwithstanding the causation issue, plaintiff's claim will still fail, if, as a matter of law, she failed to present a fact question as to whether she suffered a "serious impairment of body function." MCL 500.3135(1).

A person remains liable in tort for noneconomic loss caused through his or her use of a motor vehicle if the injured person “has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). Whether an injured person has a serious impairment of body function is a question of law for the court if the court finds either of the following:

- (i) There is no factual dispute concerning the nature and extent of the person’s injuries.
- (ii) There is a factual dispute concerning the nature and extent of the person’s injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement. [MCL 500.3135(a).]

Therefore, if plaintiff’s injuries, taken in a light most favorable to her, do not rise to the level of a serious impairment of a body function, then it was appropriate for the trial court to grant summary disposition in favor of defendant.

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 construing this section, our Supreme Court explained,

. . . if a court can decide the issue as a matter of law, it must next determine if an “important body function” of the plaintiff has been impaired. 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. [*Kreiner, supra* at 132.]

The Court then explained that, if an important body function has been impaired, the trial court must then determine “if the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Id.* In making this determination, “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.” *Id.* at 132-133.

As noted above, plaintiff presented evidence of several injuries, some of which were likely caused by the accident itself, and others that preexisted the accident but were aggravated by it. Furthermore, all of these injuries were revealed through various medical diagnostic tools. Therefore, the injuries sustained by plaintiff during the accident were all objectively manifested. In addition, our Supreme Court has held that injuries to the lower back and hip constitute an impairment of an important body function. *Id.* at 136. Thus, the only remaining issue is whether the injuries affected plaintiff’s general ability to lead her normal life.

Plaintiff stated in her deposition that she suffers from pain in her back and legs. She also said that she can perform her household chores “pretty well,” but cannot dig, paint or mow her lawn. She also stated that she has problems stepping back and has muscle contractions that keep her up at night and prevent her from taking long trips. Finally, she stated that she can no longer

work more than 20 hours per week. While these complaints certainly inconvenience plaintiff, her own deposition testimony establishes that she has been able to manage her pain with medications, is able to workout and is able to work regularly.² Consequently, in light of *Kreiner*, we cannot find that plaintiff's impairments have affected her overall ability to conduct the course of her normal life.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski

I concur in result only.

/s/ William B. Murphy

² We note that plaintiff's work restrictions appear to have initially been self-imposed with her physician acquiescing in the restriction after she complained about problems with working longer hours. Our Supreme Court has indicated that self-imposed restrictions, "based on real or perceived pain" do not establish a residual impairment. *Kreiner v Fischer*, 471 Mich 109, 133 n 17; 683 NW2d 611 (2004).