

STATE OF MICHIGAN  
COURT OF APPEALS

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LORRI HADDIX,

Plaintiff-Appellant,

v

ELIZABETH MARIE MAJCHRZYCKI,

Defendant-Appellee.

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UNPUBLISHED

May 17, 2005

No. 244983

Alpena Circuit Court

LC No. 01-003169-NI

ON REMAND

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

This case is before us on remand from our Supreme Court for reconsideration in light of *Kreiner v Fischer*, 470 Mich 109; 683 NW2d 611 (2004). In light of the *Kreiner* decision, we affirm the trial court’s order granting defendant’s motion for summary disposition.

In *Kreiner*, the Supreme Court provided the analysis to address whether the statutory threshold of “serious impairment of body function” has been satisfied:

First, a court must determine that there is no factual dispute 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. If a court so concludes, it may continue to the next step. But, if a court determines there are factual disputes concerning the nature and extent of a plaintiff’s injuries that are material to determining whether the plaintiff has suffered a serious impairment of body function, the court may not decide the issue as a matter of law. MCL 500.3135(2)(a)(i) and (ii).

Second, 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.

If a court finds that an important body function has been impaired, and that the impairment is objectively manifested, it then must determine if the impairment affects the plaintiff's general ability to lead his or her normal life. In determining whether the course of plaintiff's normal life has been affected, 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. Once this is identified, the court must engage in an objective analysis regarding whether any difference between plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's "general ability" to conduct the course of his life. 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.

The following nonexhaustive list of objective factors may be of assistance in evaluating whether the plaintiff's "general ability" to conduct the course of his normal life has been affected: (a) the nature and extent of the impairment, (b) the type of length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery. This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves. For example, that the duration of the impairment is short does not necessarily preclude a finding of a "serious impairment of body function." On the other hand, that the duration of the impairment is long does not necessarily mandate a finding of a "serious impairment of body function." Instead, in order to determine whether one has suffered a "serious impairment of body function," the totality of the circumstances must be considered, and the ultimate question that must be answered is whether the impairment "affects the person's general ability to conduct the course of his or her normal life." [Id. at 131-134 (footnotes omitted).]

Viewing the evidence in the light most favorable to plaintiff as the nonmoving party, plaintiff's knee injury was objectively manifested and impaired her ability to walk, an important body function. However, only de minimus objective evidence<sup>1</sup> was presented to show that plaintiff's residual impairment affected her general ability to lead her normal life. Plaintiff missed several weeks of work after surgery in September 2000, and thereafter returned to work as a janitor with restrictions against squatting or kneeling for six weeks. She was discharged from physical therapy in November 2000 after achieving her goals, and she had not consulted a physician regarding her knee since October 2000. Five months after surgery, plaintiff obtained a second job as a delivery truck driver, handling items weighing thirty to forty pounds. Although plaintiff complained of occasional knee pain, she did not work with any physician-imposed

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<sup>1</sup> We note that defendant did not submit the relevant portions of the deposition testimony or medical evidence, but rather summarized the information in the narrative portion of the brief, contrary to MCR 2.116(G)(4). However, we accepted supplemental filings from the parties, and plaintiff has not disputed the accuracy of the factual information presented. Consequently, for reasons of judicial economy, we have addressed the merits of the issue.

restrictions. Any limitations on recreational activity were also self-imposed by plaintiff. There was no objective evidence to support plaintiff's complaint of continued pain. "Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain" are insufficient to establish that plaintiff's general ability to conduct the course of her normal life has been affected. *Id.* at 133 n 17. "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." *Id.* at 137. Based on the *Kreiner* decision, we affirm the trial court's order granting defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Karen M. Fort Hood

I concur in result only.

/s/ Jessica R. Cooper