STATE OF MICHIGAN

COURT OF APPEALS

TIFFANY CHRISTINE TEWELL,

Plaintiff-Appellant,

v

GEORGE JAMES LATCHAW, JR., and LAURA LATCHAW,

Defendants-Appellees.

UNPUBLISHED
June 21, 2005

No. 261213
Allegan Circuit Court
LC No. 03-034319-NI

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

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

In 2000, plaintiff was a passenger in a truck that was owned by defendant Laura Latchaw and being driven by defendant George Latchaw, Jr. Plaintiff suffered various injuries when she was thrown from the vehicle after it rolled over several times. Plaintiff had her arm in a sling for two weeks and missed a month's work as a grocery bagger. Continuing back pain led to diagnosis of scoliosis at the thoracic spine.

Plaintiff states that she thereafter worked summers as a cashier, which aggravated her neck pain, and, as of September 2004, was attending college, babysitting ten hours per week, and working as a secretary. However, she still suffered back and neck pain. Plaintiff maintains that riding a bicycle and sitting for prolonged periods of time aggravate her back and neck pains and that she cannot do heavy lifting.

Plaintiff filed suit alleging that the injuries she sustained in the accident constituted a serious impairment of body function. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), relying heavily on *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). The trial court granted the motion, concluding that the no-fault act is constitutional, and that "[t]here's no evidence of a continuing problem here."

I. Serious Impairment of Body Function

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999).

MCL 500.3135(1) provides that a person "remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." "'Serious impairment of body function' means 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 has suffered serious impairment of a body function is a question of law for the court, where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered serious impairment of a body function. MCL 500.3135(2). Accordingly, "the issue . . . should be submitted to the jury only when the trial court determines that an 'outcome-determinative genuine factual dispute' exists." *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), quoting *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

> 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 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. [*Kreiner*, *supra* at 133 (footnote omitted).]

The focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body. *Miller*, *supra* at 249. Residual impairments based on perceived pain are a function of "physician-imposed restrictions," not "[s]elf-imposed restrictions." *Kreiner*, *supra* at 133 n 17.

Plaintiff's argument for this issue consists mainly of characterizing it as a mixed question of fact and law, and the conclusory statement, "[w]e can agree that, if the initial disability were all the Plaintiff suffered, she would not meet the threshold. However, even after the initial disability disappeared, Plaintiff was left with continuing (and possibly permanent) back and neck pain, which affects practically everything she does." Plaintiff thus implies that the trial court erred in treating this as an issue properly decided by the court, instead of being given to the jury. However, *Kreiner*, *supra*, likewise involved plaintiffs who had long discontinued medical treatments for their injuries and who complained that their lingering discomforts prevented only a few of the sundry activities previously performed, and somewhat hindered certain others. *Kreiner*, *supra* at 122-125, 135-137. If the plaintiffs in *Kreiner* could not show a serious impairment in their *general* ability to lead their normal lives, *id.* at 135-137, neither can plaintiff in the instant case. The trial court correctly applied binding authority and granted summary disposition.

II. Constitutionality of the No-Fault Act

Plaintiff argues that the no-fault act's abolition of ordinary tort remedies is unconstitutional. However, the only constitutional provision that plaintiff cites is that covering Due Process in our state constitution,[1] but that is in the context of equating rights to property with rights to life and liberty. Plaintiff's general arguments otherwise seem to touch on a multiplicity of constitutional rights, including those of access to the courts,[2] assembly,[3] equal protection,[4] and compensation for takings.[5] Plaintiff's failure to cite specific constitutional language afoul of which the no-fault act putatively runs is a failure to present this issue adequately for appellate consideration. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998); *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987).

Plaintiff's argument has been addressed by our Supreme Court's broad pronouncement on the constitutionality of the no-fault act:

> *The No-Fault Act, insofar as it provides benefits to victims of motor vehicle accidents without regard to "fault" (as a substitution for tort remedies which are, in part, abolished), constitutionally accomplishes its goal* . . . . [T]his Court holds that the No-Fault Act does not exceed the traditional scope of the Legislature's police power. The partial abolition of tort remedies under the act is constitutional . . . . [*Shavers v Attorney General*, 402 Mich 554, 579; 267 NW2d 72 (1978) (emphasis in the original).]

Although the *Shavers* Court identified some procedural problems with the implementation of the no-fault act, including those having to do with the availability of no-fault insurance for every driver at reasonable rates, it declared that the act "is constitutional in its general thrust," and left it in effect while allowing the Legislature to correct the procedural problem. *Id.* at 580-581. The *Kreiner* Court recently and approvingly recounted these aspects of *Shavers*, *supra*. *Kreiner*, *supra* at 115-116.

Because plaintiff's general challenges concern the "partial abolition of tort remedies" of which our Supreme Court expressly approved, her argument must fail. Plaintiff acknowledges *Shavers*, *supra*, but suggests that it should be reevaluated now that nearly thirty years have passed. We must decline such an invitation because, as adeptly stated by the trial court, we are bound to follow the law as written by the majority of our state's Supreme Court.

---

[1] Const 1963, art 1, § 17. See also US Const, Am XIV, § 1.

[2] US Const, Am VI; Const 1963, art 1, § 20.

[3] US Const, Am I; Const 1963, art 1, § 3.

[4] US Const, Am XIV, § 1; Const 1963, art 1, § 2.

[5] US Const, Am V; Const 1963, art 10, § 2.

Affirmed.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello