

STATE OF MICHIGAN
COURT OF APPEALS

THERESA WHOTTE-LICATOVICH,

Plaintiff-Appellant,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

June 23, 2005

No. 260257

Wayne Circuit Court

LC No. 03-324129-NO

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was involved in an automobile accident with an uninsured driver. She filed this action against her own insurer to recover noneconomic damages. Defendant moved for judgment on the ground that plaintiff had not met the serious impairment threshold for recovery. The trial court agreed and granted the motion.

We review the trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

A person is subject to tort liability for automobile negligence if the injured person "suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). 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).

In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), our Supreme Court established a "multi-step process . . . to provide the lower courts with a basic framework for separating out those plaintiffs who meet the statutory threshold from those who do not." *Id.* at 131. The trial court apparently determined that any factual dispute was not material to whether plaintiff suffered a serious impairment of body function because it ruled on the issue as a matter of law. Having reviewed the record, we find no error as to that aspect of the trial court's ruling.

* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

The next steps require the trial court to determine whether plaintiff had suffered impairment of an important body function and, if so, whether that impairment was objectively manifested. The trial court did not address these subissues, apparently because defendant did not dispute them. Therefore, we will assume that plaintiff satisfied these aspects of the test.

If an important body function has been impaired and the impairment is objectively manifested, the next question is whether the impairment affected the plaintiff's general ability to lead her normal life. *Id.* In answering this question, the court is to compare the plaintiff's life before and after the accident and consider "the significance of any affected aspects on the course of plaintiff's overall life." *Id.* at 132-133. Factors to consider 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. "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 normal life." *Id.* (emphasis in original).

Plaintiff suffered debilitating headaches before and after the accident. Before the accident, she took medication, had nerve block injections, and underwent surgery. The pain from the headaches left her unable to work. After the accident, plaintiff was still unable to work. She continued on the medication she had been taking, and had three nerve block injections in 2001 and surgery in May 2002. She improved significantly within a month. She continued to use the surgically implanted nerve stimulators, and by May 2003, the problem was essentially resolved. Apart from the positive results of the surgery, there was no change in plaintiff's life before and after the accident. Although she had obtained a job just days before the accident, she apparently abandoned it after the accident. There is no indication that she was medically restricted from working, and "[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish" residual impairment. *Id.* at 133 n 17. In light of such evidence, we conclude that plaintiff did not meet the serious impairment threshold for tort recovery. Summary disposition was correctly granted.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs