

STATE OF MICHIGAN
COURT OF APPEALS

JEAN ANNETTE HUFF,

Plaintiff-Appellant,

v

DAVID LEE CANTER,

Defendant-Appellee.

UNPUBLISHED

August 2, 2005

No. 262163

Oakland Circuit Court

LC No. 04-057699-NI

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's 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 and defendant were involved in an automobile accident. Plaintiff was treated in the emergency room for a scalp laceration that required fourteen staples. She consulted with her primary care physician on several occasions over the ensuing months, and complained of migraine headaches, neck pain, back pain, and left shoulder pain. An MRI of plaintiff's lumbar spine showed degenerative disc disease with a posterior radial tear, and mild central disc protrusion. An MRI examination of plaintiff's left shoulder showed a tear in her rotator cuff.

Plaintiff filed suit alleging that the injuries she sustained in the accident constituted a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that any injuries sustained by plaintiff in the accident did not affect her general ability to lead her normal life. The trial court granted the motion, finding that although plaintiff had an objectively manifested injury of an important body function, her injuries did not affect her general ability to lead her normal life.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A serious impairment of body function is "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). For an impairment to be objectively manifested, there must be a medically identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). Whether a person has suffered a serious impairment of body

function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a).

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course of the person's life. The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. The court must examine the plaintiff's life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff's life. In order to determine whether the plaintiff's general ability to lead his or her normal life has been affected by the objective impairment, the court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Kreiner v Fischer*, 471 Mich 109, 131-134; 683 NW2d 611 (2004).

Plaintiff's laceration, and various other conditions, were objectively manifested via x-rays and an MRI examination. *Jackson, supra*. The ability to use the neck and back is an important body function. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986). Plaintiff experienced headaches and pain and limited movement in her neck, shoulder, back, and legs both prior to and after the accident. Her employment activities were restricted for several years prior to the accident due to her physical and psychological problems. In *Kreiner, supra*, the plaintiff, a construction worker, was involved in an accident. Thereafter, his employment activities were limited in that he could no longer: work more than six hours per day, stand on a ladder for longer than twenty minutes, lift items in excess of eighty pounds, or do roofing work. In addition, he was unable to hunt to the extent he had prior to the accident. Nevertheless, the *Kreiner* Court concluded that the plaintiff's injuries did not affect his general ability to lead his normal life. *Id.* at 137-138. Here, no evidence showed that plaintiff's employment activities were restricted to a greater extent after the accident.¹ Her inability to do housework to the extent she had prior to the accident does not exceed *Kreiner's* limitations following his accident. Plaintiff did not present evidence to create an issue of fact as to whether her injuries affected her general ability to lead her normal life. Absent such evidence, plaintiff was unable to make out a prima facie case that she suffered a serious impairment of body function. The trial court did not err in determining that the issue of whether plaintiff suffered a serious impairment of body function was a question of law under the circumstances. MCL 500.3135(2)(a).

¹ The evidence showed that plaintiff had been seeking a disability retirement prior to the accident. Following the accident, she became eligible to take early retirement, and did so.

Affirmed.

/s/ Stephen L. Borrello
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly