

STATE OF MICHIGAN
COURT OF APPEALS

RANDIE BLACK and KRISSY BLACK,

Plaintiffs-Appellants,

v

PETER PRATT,

Defendant-Appellee.

UNPUBLISHED

September 15, 2005

No. 261784

Ingham Circuit Court

LC No. 03-000323-NI

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant. We affirm.

This case arises as a result of a collision between the automobile owned and operated by plaintiff Randie Black and the automobile owned and operated by defendant Peter Pratt. Plaintiff Krissy Black was a passenger in Randie's vehicle at the time of the collision. Prior to trial, defendant brought a motion for summary disposition pursuant to MCR 2.116(C)(10), contending that there was no genuine issue of material fact regarding whether plaintiffs suffered serious impairments of body functions. Plaintiffs also sought judgment on their motion for summary disposition on the issues of liability and whether plaintiffs' impairments affected their general ability to lead a normal life. Following a hearing on defendant's motion for summary disposition, the trial court granted the motion, determining that neither of plaintiffs' injuries fell within the definition of a serious impairment of body function.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). A motion under MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. *Id.* This Court must review the record evidence and all reasonable inferences drawn from it and determine whether a genuine issue regarding any material fact exists to warrant a trial. *Id.* at 479-480.

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." *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004), quoting MCL 500.3135(7). "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." *Id.* at

131-132. Next, the court must determine if an important body function has been impaired and whether such impairment has been objectively manifested. *Id.* at 132. Finally, the court must determine if the impairment affects the plaintiff's general ability to lead his or her normal life. *Id.*

In determining whether the course of the 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 the plaintiff's overall life. Once this is identified, the court must engage in an objective analysis regarding whether any difference between the 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. [*Id.* at 132-133.]

Factors to consider in such inquiry 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. Finally, "[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.

The issue in this case is whether plaintiffs' impairments affected their general ability to lead their lives.¹ We agree with the trial court and find that they did not.

With regard to Krissy Black, plaintiffs contend that she suffers a permanent ankle injury that she cannot stand on, and claim that Krissy's life has been affected regarding tasks such as standing, walking, working out, and wearing high heels. Krissy's major complaints consist of the inability to run long distance, difficulty in wearing high-heeled shoes, and the required wearing of an ankle brace during certain activities. Although Krissy indicated that she was no longer able to run long distances, she testified that she could run or jog approximately half a mile and that she was able to do aerobic exercise following the accident. Krissy also testified that she had gone snowboarding and had played kickball following the accident. As far as her limitations went, Krissy wears a brace or Ace bandage when she exercises and works out. Krissy did testify that it hurt her to wear high-heeled shoes, but that it was something she could tolerate. Finally, Krissy testified that she did not require crutches or a cane to walk, and that she was not prescribed any medication for her injury. Following the accident, Krissy continued to work, attend school, drive, travel, and exercise. Indeed, Krissy testified that, while she continued to do

¹ Although the parties dispute the nature and extent of plaintiffs' injuries, the dispute is not material to the determination whether plaintiffs have suffered a serious impairment of body function. As stated in *Kreiner*, although there is a factual dispute, assuming that all plaintiffs' allegations concerning the nature and extent of their injuries are true, we still conclude that plaintiffs have not suffered a "serious impairment of body function." *Kreiner, supra* at 136 n 21.

exercises for her ankle, her ankle was getting stronger. Krissy does not see a physician regularly for her injury, and testified that she had not injured herself to the point of requiring medical attention while exercising, nor was she affected emotionally by the accident. We therefore find that Krissy's life following the accident is not so different that her "general ability" to lead her normal life has been affected. Thus, Krissy's injury does not satisfy the requirements necessary to demonstrate a serious impairment of body function.

Regarding plaintiff Randie Black, plaintiffs argue that her life has been affected by her injury because she must work twice as long and has "an ugly, deformed 'claw' that collapses whenever she tries to pinch, pick something up, write, etc." Plaintiffs contend that Randie's life has been affected regarding tasks such as pushing in the alarm in the morning, brushing her teeth, and "everything that turns a right hand in belief." Again, we find that Randie's impairment following the accident did not affect her "general ability" to lead her normal life. Although Randie has trouble writing, lifting things, and opening jars and car doors, she testified that she uses a splint that assists her in performing those tasks. Randie also testified that she was able to do the grocery shopping with assistance in carrying the groceries. Significantly, Randie cared for her boyfriend during his convalescence by helping him use the restroom, assisting him in getting in and out of bed, doing the laundry, and walking the dog. Randie was able to travel for pleasure and for work, including a trip during which she drove to Florida, and did not miss any time from work due to her injury. Aside from Randie's testimony that she was restricted in certain physical activities (aerobics and kickboxing) due to high blood pressure and that her blood pressure increased following the accident, there was no medical evidence presented to confirm such and it appears to be a self-imposed restriction. In fact, the medical evidence presented demonstrated that Randie suffered from high blood pressure prior to the accident, but did not indicate any such restrictions. Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain, are insufficient to demonstrate the lingering effects indicative of a serious body function. *Kreiner, supra* at 133 n 17. Regardless, Randie has continued to exercise following the accident, running two to three times a week. Thus, Randie's impairment did not affect her "overall or broad ability to conduct the course of [her] normal life." *Id.* at 137.

As plaintiffs have failed to demonstrate an issue of material fact exists with respect to whether there has been a serious impairment of body function, we need not address their issue regarding negligence and causation.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette