STATE OF MICHIGAN

COURT OF APPEALS

CHONG YANG and MONG MOUA, Plaintiffs-Appellants, v BRADFORD LEWIS BARNES, Defendant-Appellee.	UNPUBLISHED October 4, 2005 No. 253467 Oakland Circuit Court LC No. 2003-046612-NI

Before: Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendant in this automobile negligence action. We affirm.

On appeal, plaintiffs argue that the trial court erred in granting defendant's motion for summary disposition and dismissing their automobile negligence case under MCL 500.3135. We disagree. This Court reviews de novo a trial court's determination regarding a motion for summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

Plaintiffs argue on appeal that they presented sufficient evidence to the trial court to create an issue of fact for trial regarding whether their neck and back conditions qualify as a serious impairment of body function under MCL 500.3135. Under the no-fault act, "[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." MCL 500.3135(1). The act defines "serious impairment of body function" 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, 133-134; 683 NW2d 611 (2004), our Supreme Court articulated the following factors to be considered in determining whether an injury has affected a person's ability to lead his or her normal life:

> (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. This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive

> by themselves. . . . Instead, . . . 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."

Plaintiffs failed to present evidence showing that Chong Yang's injuries affected his general ability to lead his normal life. The record shows that Yang denied having any injuries at the scene of the accident and refused emergency treatment. Yang testified at his deposition that he did not remember missing any work, and that he continued to work as a welder despite experiencing some pain. He later treated with a chiropractor for four months and treated with a neurologist on three occasions. Although Yang's neurologist, Dr. Haranath Policherla, recommended physical therapy, there is nothing in the record that shows Yang actually attended physical therapy. According to an independent medical examination, Yang needed no further treatment and had no restrictions at work or at home. Although Dr. Policherla ordered the continued use of painkillers for Yang's radiculopathy nearly one year after the accident, the medical records state that Yang's headaches were "much better with treatment" and that Yang's cervical radiculopathy was "doing better."

Although Yang averred in an affidavit that he could not participate in numerous activities and stated that he had myriad other difficulties, his deposition testimony only indicated that he needed to have people help him with heavy lifting at his job, and that he could only play basketball a few minutes before needing a rest. There was no evidence in the record of doctor-imposed restrictions. Residual difficulties that result from pain alone and are "self-imposed restrictions" rather than "physician-imposed restrictions" will not suffice to create a genuine issue of serious impairment. *Kreiner*, *supra* at 133 n 17. Furthermore, the fact that Dr. Policherla stated in a signed affidavit that Yang's injuries "have affected his general ability to lead a normal everyday life" did not create an issue of fact. The doctor's conclusion was a legal one, and "the duty to interpret and apply the law has been allocated to the courts, not to the parties' expert witnesses." *Hottmann v Hottmann*, 226 Mich App 171, 179; 572 NW2d 259 (1997).

Yang further relies on the report authored by Dr. Stefan Glowacki, which diagnosed Yang with a dislocation of his left AC joint, torn rotator cuff in his left shoulder, "possible" herniated disc C4-C5, and a herniated disc L4-L4 with left radiculopathy. Dr. Glowacki's report, however, did not impose restrictions on Yang. Rather, Dr. Glowacki opined that "I am afraid that sooner or later he will end up with a surgical intervention. He will have a problem to do any manual labor." The vague possibility that Yang might one day need surgery or that he will someday have undefined problems doing manual labor, notwithstanding his current capabilities, is insufficient to create an issue of fact for trial. See *Karbel v Comerica Bank*, 247 Mich App 90, 97-98; 635 NW2d 69 (2001) (conjecture and speculation are insufficient to create a genuine issue of material fact).

Plaintiffs also failed to show that Mong Moua's injuries seriously affected her general ability to lead her normal life. Moua testified at her deposition that her primary restrictions were that she could not type at work as long as she could before the accident, and her sleep was disturbed by discomfort. She missed only one week of work and two weeks of school. She treated with a chiropractor for four months and had only a few visits with Dr. Policherla after the accident. Although Dr. Glowacki opined that Moua would suffer from her herniated discs and

left sciatica "for the rest of her life," the record is devoid of any doctor-imposed restrictions on Moua's activities. Like Yang, the self-imposed restrictions enumerated in Moua's supplemental affidavit submitted to the trial court are insufficient to create an issue of fact, as is Dr. Policherla's expert opinion that Moua's injuries have affected her general ability to lead a normal life. *Kreiner*, *supra*; *Hottmann*, *supra*. Therefore, the trial court correctly found that plaintiffs failed to meet the statutory threshold.

Plaintiffs' argument that the trial court erred by not allowing their attorney to "argue plaintiffs' case and to establish a record in the lower court" is without merit. Plaintiffs filed a written response to defendant's motion for summary disposition and filed six affidavits with the trial court in opposition to defendant's motion. Plaintiffs were also given adequate time at oral argument. The trial court's refusal to listen to plaintiffs' attorney's criticisms of its ruling is not tantamount to the trial court refusing to allow plaintiffs' attorney to argue the merits of the case. Furthermore, plaintiffs provide no legal support or analysis in support of its assertion that the trial court erred in not allowing plaintiffs to "make a record." A party may not leave it to this Court to search for authority in support of its position by giving "issues cursory treatment with little or no citation of supporting authority . . . ." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Affirmed.

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