

STATE OF MICHIGAN
COURT OF APPEALS

JUDY L. KRAPF, Individually and as Next Friend
of PAIGE A. KRAPF, a Minor,

UNPUBLISHED
November 10, 2005

Plaintiffs-Appellants,

v

No. 264042
Macomb Circuit Court
LC No. 04-001183-NI

CENTERLINE PUBLIC SCHOOLS,

Defendant-Appellee.

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff Judy L. Krapf, individually and as next friend of Paige A. Krapf, a minor, appeals as of right from 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).

On October 10, 2003, Paige A. Krapf (hereinafter referred to as "Paige"), then thirteen years old, was riding the school bus when the bus braked suddenly. Paige was thrown forward when the bus stopped and struck her head and shoulder on the seat in front of her. X-rays taken the same day revealed no spinal abnormalities. An MRI performed on November 24, 2003, revealed a mild disc bulge at C5-6, but no herniation in Paige's thoracic spine. After the accident, Paige wore a neck brace for three weeks, participated in physical therapy for one month, and was accommodated in various ways at school. A neurosurgeon with whom Paige consulted in February 2004 found no abnormalities and opined that increased physical activity would be appropriate. An orthopedic surgeon with whom Paige consulted in February 2005 opined both that the November 2003 MRI showed evidence of disc herniation and that Paige's condition was attributable to the accident.

Plaintiff, individually and as next friend of Paige, filed suit alleging that the injuries Paige sustained in the bus accident resulted in a serious impairment of body function. Plaintiff alleged

that she suffered a loss of consortium. Plaintiff also alleged that defendant was liable under the motor vehicle exception to governmental immunity, MCL 691.1405.¹

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that no evidence created a question of fact as to whether any injury Paige sustained in the accident affected her general ability to lead her normal life and asserting that her claim was barred by governmental immunity. The trial court granted the motion pursuant to MCR 2.116(C)(10), stating that assuming arguendo that Paige demonstrated via objective evidence that an important body function had been impaired, no evidence showed that any such impairment affected her general ability to lead her normal life. The trial court did not address defendant's assertion that it was entitled to summary disposition on the basis of governmental immunity.

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). Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

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).

We affirm. An objectively manifested impairment consists of a medically identifiable injury or a condition that has a physical basis. *Jackson, supra*. Physicians differed as to whether Paige's MRI, performed in November 2003, showed evidence of disc herniation. The ability to

¹ Judy Krapf filed a separate suit seeking first party no-fault benefits. That case was consolidated with the instant case and thereafter was settled through case evaluation. That claim is not at issue in this appeal.

use one's back is an important body function. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986). Thus, a dispute existed regarding the nature and extent of Paige's injuries.

The trial court correctly concluded that even if Paige suffered injuries to an important body function as a result of the accident, defendant was still entitled to summary disposition because no evidence created a question of fact as to whether Paige's injuries affected her general ability to lead her normal life. Paige asserted that her injuries prevented her from engaging in recreational activities with her friends; however, no evidence showed that any physician placed any restrictions on Paige's activities. Rather, the evidence showed that Paige's restrictions were self-imposed. Self-imposed restrictions as the result of real or perceived pain do not constitute evidence of a serious impairment of body function. *Kreiner, supra* at 133 n 17. In *McDaniel v Hemker*, 268 Mich App ___; ___ NW2d ___ (Docket No. 263150, issued 9/27/05), we held that a self-imposed restriction based on something other than pain, such as physical incapacity, may establish the existence of a serious impairment of body function. *Id.*, slip op at 8. No evidence showed either that Paige had any physician-imposed restrictions on her activities or that something other than pain prevented her from engaging in recreational activities. No evidence presented in opposition to defendant's motion for summary disposition created an issue of fact as to whether Paige's injuries affected her general ability to lead her normal life. Absent such evidence, plaintiff was unable to make out a prima facie case that Paige suffered a serious impairment of body function. The trial court did not err in determining that the issue of whether Paige suffered a serious impairment of body function was a question of law under the circumstances. MCL 500.3135(2)(a). Summary disposition was proper.

Affirmed. Defendant may tax costs.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter