

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH SUE NICKE,

Plaintiff-Appellant,

V

KENNETH MICHAEL MILLER,
AUTOMOTIVE RENTALS, INC., HIGH
VOLTAGE MAINTENANCE CORPORATION.,
and EMERSON ELECTRIC COMPANY,

Defendants-Appellees,

and

JUAN HERNANDEZ-MORENO and STATE
FARM MUTUAL AUTO INSURANCE
COMPANY,

Defendants.

UNPUBLISHED

January 26, 2006

No. 263929

Wayne Circuit Court

LC No. 03-335375-NI

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

In this automobile negligence case, plaintiff appeals as of right the trial court's order granting summary disposition to defendants. The trial court found that plaintiff failed to establish a prima facie case that she suffered a serious impairment of a body function as required to recover under the no-fault act. We reverse and remand.

Plaintiff first argues that her injuries meet the threshold requirement for serious impairment of a bodily function under the no-fault act, MCL 500.3101 *et seq.*, so the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) on that ground. We review the trial court's grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The no-fault act generally replaced common-law negligence principles in automobile accidents with a system for obtaining compensation from the injured parties' own insurance companies. *Kreiner v Fischer*, 471 Mich 109, 114; 683 NW2d 611 (2004). However, common-law liability remains intact if the injured person suffers a serious impairment of a body function. MCL 500.3135(1). MCL 500.3135(7) defines "serious impairment of a 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.” Our Supreme Court explained as follows:

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 minimis effect would not, as objectively viewed, affect the plaintiff's “general ability” to lead his life. [*Kreiner, supra* at 132-133 (emphasis in original).]

Plaintiff has suffered back and neck problems since childhood. She had surgery on her neck two years before the present accident occurred. After that surgery, her condition improved, but she continued to experience pain in her back, neck, and shoulder. Plaintiff was off work from the present accident for approximately three weeks before returning full-time. She accepted a buy-out from her employer, then worked full-time for another company for more than a year. Plaintiff claims that her general ability to lead her normal life has been affected because she is unable to work. However, in the substantial amount of medical history that was provided to the court, it does not appear that her doctor ever restricted her activity or employment, except for the three weeks that she was off work after the accident. When the extent of the impairment is considered, “[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish [that] point.” *Kreiner, supra* at 133 n 17.

Plaintiff's life before the accident is not substantially different from her life after the accident. Although she suffers some additional pain and cannot do so to the same extent, she can still groom herself, perform house and yard work, collect antiques, and hike. Plaintiff suffered pain associated with heavy lifting and other strenuous activities before and after the accident. Plaintiff worked in a sedentary position that required no heavy lifting before and after the accident. Plaintiff failed to present evidence to establish that her general ability to lead her normal life has been affected, so the trial court correctly found that plaintiff is not presently suffering a serious impairment of an important bodily function.

However, although we find that plaintiff has not suffered a *permanent* serious impairment, a serious impairment of a body function can be found even where “the duration of the impairment is short.” *Kreiner, supra* at 134. “While an injury need not be permanent, it must be of sufficient duration to affect the course of a plaintiff's life.” *Id.*, 135. Plaintiff's treatment included discectomy surgery to her neck and acromioplasty surgery to her right shoulder. Her treating surgeon opined that plaintiff had no quality of life and that all activities would limit her, thereby requiring the performed surgeries. Given the significant nature of the surgeries involved in treating plaintiff's injury, we feel that summary disposition cannot be

granted until the possibility of a temporary serious impairment of an important bodily function has been considered by the trial court.¹

We therefore reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis

¹ Apparently, neither party directed the trial court's attention to this issue. The record is too incomplete for this Court to conduct such an analysis.