

STATE OF MICHIGAN
COURT OF APPEALS

MARY RICHARDS-KALLMAN and WILLIAM
KALLMAN,

UNPUBLISHED
February 21, 2006

Plaintiffs-Appellants,

v

No. 258121
Houghton Circuit Court
LC No. 02-012033-NI

CAROLYN JANE HACKBARTH,

Defendant-Appellee.

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff 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).

Plaintiff Mary Richards-Kallman¹ was struck by a motor vehicle operated by defendant. As a result, plaintiff suffered a torn meniscus in her right knee that may require surgery for full recovery. However, because she was pregnant at the time, her physician recommended postponing surgery and reassessing the situation after she delivered her baby. The physician recommended physical therapy to strengthen the muscles surrounding the knee and stated that, despite her persisting discomfort, "she should be able to slowly go back to her normal activity." After giving birth, plaintiff has not followed up with her physician or any other surgeon regarding her knee injury. Plaintiff admitted that, despite the pain in her knee, she continues to perform most of her day-to-day activities, including grocery shopping, cooking, driving, cleaning the house with help from her daughters, and walking up and down stairs. She also continues to sing opera, has gone sailing, and has taken several trips to Florida for vacation.

A trial court's decision on a motion for summary disposition is reviewed de novo. See *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In evaluating a motion brought under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions,

¹ Because William Kallman's claim is derivative of Mary Richards-Kallman's claim, the singular reference "plaintiff" in this opinion will denote the latter exclusively.

admissions, and other evidence submitted by the parties in a light most favorable to the party opposing the motion. *Maiden v Rosewood*, 461 Mich 109, 120; 597 NW2d 817 (1999). “Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.” *Id.*

A person is subject to tort liability for noneconomic loss for automobile negligence only if the injured person “has suffered death, serious impairment of body function, or permanent disfigurement.” MCL 500.3135(1). 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.” MCL 500.3135(7).

The trial court must initially determine whether a factual dispute exists “concerning the nature and extent of the person’s injuries.” *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004). If no material question of fact exists regarding the extent of the plaintiff’s injuries, whether they constitute a serious impairment of a bodily function is a question of law for the court. MCL 500.3135(2)(a)(i); *Kreiner, supra* at 132. When a court finds an objectively manifested impairment of an important bodily function, “it then must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Kreiner, supra*.

The latter inquiry requires an examination of the plaintiff’s life before and after the accident, as well as the extent to which the plaintiff’s overall life has been affected by the injury. *Id.* The court should objectively determine whether any change in lifestyle “has actually affected the plaintiff’s ‘general ability’ to conduct the course of her life.” *Id.* at 132-133.

Plaintiff’s physician did not restrict her from partaking of any of her usual activities, but instead stated that “she should be able to slowly go back to her normal activity” Further, her physician did not advise surgery while plaintiff was pregnant, but instead planned to reexamine her after delivery to reassess whether surgery was necessary, and plaintiff has in fact failed to follow up on this with her physician. Because her physician did not restrict her from participating in the activities that she says she is unable to do, plaintiff complains of self-imposed, not medically imposed, restrictions. However, self-imposed restrictions do not establish an impairment affecting the general ability to lead a normal life. *Kreiner, supra* at 133 n 17; *Moore v Cregeur*, ___Mich App___ ; ___NW2d___ (Docket No. 260846, issued May 24, 2005), slip op at 2.

Before her injury, plaintiff’s daily activities included cleaning the house, cooking, shopping, taking care of her children, and transporting them around town. She also engaged in singing opera, playing the flute, sailing, and vacationing in Florida. Plaintiff testified that despite her injury she continues to do most of the household work, and continues to drive. She also admits she has gone sailing, continued singing opera, and vacationed in Florida.

This Court’s recent decision in *Moore, supra*, is instructive. The plaintiff sustained injuries to both of her eyes, requiring surgery. *Moore, supra*, slip op at 1. The left eye was successfully repaired, but not the right, and so an impairment remained. *Id.* According to the evidence, glasses could not correct the condition, and further surgery carried the risk of permanent blindness. *Id.*, slip op at 2. This Court noted that the plaintiff’s loss of vision “will affect every aspect of her waking life to some extent,” and that the aggregate effects thereof affected her general ability to lead her normal life. *Id.*, slip op at 3-4.

In this case, however, plaintiff's knee injury does not affect every aspect of her waking life, but instead causes pain when she tries to squat, such that she elects not to. Plaintiff's injuries are similar to the plaintiff's other injuries in *Moore*, consisting of a collapsed lung, fractured ribs, and neck and back pain, which this Court concluded did not affect her general ability to lead her normal life as defined in *Kreiner*. *Moore, supra*, slip op at 2. The *Moore* plaintiff's eye surgery involved permanent injury or risky surgery, while her collapsed lung and fractured ribs eventually healed. *Id.* In this instant case, however, plaintiff has not proffered any evidence that her injury is permanent, or that surgery would not correct it without imposing serious risks.

Because plaintiff has failed to produce evidence to show that her injuries affect her general ability to lead her normal life, the trial court did not err in granting summary disposition to defendant.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald