

STATE OF MICHIGAN
COURT OF APPEALS

TAMISHA LINDSAY-WHITE,

Plaintiff-Appellant,

v

JULIE MECHELEE-DENISE HUMES
and DONALD R. SWARTHOUT,

Defendants-Appellees,

and

LANNELL THOMPSON,

Defendant.

UNPUBLISHED

March 16, 2006

No. 258745

Saginaw Circuit Court

LC No. 02-042880-NI

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendants under MCR 2.116(C)(10). We affirm.

This case arises out of a motor vehicle accident in which plaintiff was a passenger in a car driven by defendant Humes.¹ The car collided with a truck driven by defendant Swarthout. Plaintiff maintained that she injured her jaw, two teeth, her left knee and her lower back in the accident, and sued to recover noneconomic damages. Swarthout moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff's injuries did not meet the threshold standard for a serious impairment of body function. The trial court initially denied the motion, but on reconsideration it granted summary disposition in favor of defendants.

We review 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 for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* We

¹ The automobile was owned by defendant Thompson, who is not a party to this appeal.

review the record evidence and all reasonable inferences drawn from it and decide whether a genuine issue regarding any material fact exists to warrant a trial. *Id.* at 479-480.

Under MCL 500.3135, a person is subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. “[S]erious 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).

In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), our Supreme Court provided a framework for determining whether a plaintiff meets the serious impairment of body function threshold. First, a court is to determine whether a factual dispute exists “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. Second, a court must determine if an “important body function” of the plaintiff has been impaired, and if the impairment is objectively manifested. *Id.* at 132.

A court “then must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Id.* “[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.” *Id.* at 132-133. A court must then “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.” *Id.* at 133. “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.*

The *Kreiner* Court provided a “nonexhaustive list of objective factors that may be of assistance in evaluating whether the plaintiff’s ‘general ability’ to conduct the course of his normal life has been affected: (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.* Specifically in regard to residual impairments, the *Kreiner* Court noted that “[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point.” *Id.* at 133 n 17. However, “[t]he necessary corollary of this language is that physician-imposed restrictions, based on real or perceived pain, can establish the extent of a residual impairment.” *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005). This does not require that the physician offer a medically identifiable or physiological basis for imposing restrictions based on pain; however, a recitation of a physiological basis provides support for the conclusion that the restrictions are physician-imposed, rather than self-imposed. *Id.* at 284-285. In addition, self-imposed limitations based on physical inability rather than pain can support a finding that the plaintiff has suffered a threshold injury. *Id.* at 283.

Plaintiff has arguably shown the objective manifestation of an injury that impaired an important body function, given that physician records support a conclusion that she injured her back, jaw, and knee in the accident. However, we conclude that plaintiff has failed to show that her initial injuries, when coupled with any residual effects, changed her general ability to lead her normal life under the standard set out in *Kreiner*. Plaintiff initially complained of head,

back, and knee pain, and chipped teeth. She was given pain medication and released. She did not return for further treatment for a number of months. Plaintiff reports continued pain and stiffness, but she has shown only a minor effect on her prior activities. Her injuries have not impacted her actual current employment, and her statement that her limitations would impact her ability to complete vocational programs or to maintain employment in the cosmetology field is speculative. She does not present evidence of severely curtailed pre-accident physical activities or of an otherwise active lifestyle. *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005). While her jaw pain may impact her ability to eat certain foods in a particular way, she does not have difficulty eating in general. In addition, plaintiff's reported inability to engage in her usual activities in the months following the accident appears to be entirely self-imposed limitations based on pain. These alone cannot establish a threshold injury. *Kreiner, supra* at 133 n 17; *McDaniel, supra* at 283-284. Under the circumstances, we find that plaintiff has failed to establish that any impairment affected her general ability to lead her normal life.

Plaintiff raises a separate issue considering whether her injuries meet the threshold requirement through proof of a permanent serious disfigurement. MCL 500.5135(1). She maintains that "several" of her teeth have been "chipped or knocked out." However, according to the medical evidence presented, none of plaintiff's teeth are missing. Our review of the record did not uncover any testimony by plaintiff or evidence that the chipped tooth or teeth has disfigured plaintiff or that it was in fact noticeable by others. Under the circumstances, plaintiff has not shown that the trial court erred in granting summary disposition in favor of defendants on this ground.

We affirm.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra