STATE OF MICHIGAN

COURT OF APPEALS

KAREN BALLARD and ARTHUR BALLARD,

Plaintiffs-Appellees,

v

TODD CHRISTOPHER DROUSE,[1]

Defendant,

and

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellant.

UNPUBLISHED
March 21, 2006

No. 264758
Bay Circuit Court
LC No. 04-003192-NI

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Defendant Farm Bureau General Insurance Company of Michigan (Farm Bureau) appeals by leave granted from the trial court's order denying its motion for partial summary disposition. The trial court ruled that the tort threshold-injury requirements of MCL 500.3135 were inapplicable to Karen Ballard and Arthur Ballard's (the Ballards) claim for first-party, no-fault benefits, and although the threshold requirements applied to the uninsured motorist claims, a genuine issue of material fact precluded the trial court from granting summary disposition. We affirm in part, reverse in part, and remand.

I. Basic Facts And Procedural History

On January 4, 2003, the Ballards were injured in a car accident when they stopped at a stop sign and a vehicle driven by Todd Drouse rear-ended the Ballards' truck. One witness estimated that Drouse had been traveling in excess of 80 miles an hour. The collision caused the

[1] The trial court entered a default judgment against Todd Drouse, and he is not a party to this appeal.

Ballards' vehicle to roll over onto its roof. Karen Ballard lost consciousness after the accident. Both Arthur and Karen Ballard were taken immediately to the Bay Medical Center by ambulance. The Ballards' vehicle was covered by a PIP policy issued by Farm Bureau in both the Ballards' names. The parties do not dispute that Drouse was uninsured.

At the hospital, Karen Ballard indicated that she had a past history of depression for which she was taking Effexor. The hospital admitted Karen Ballard for observation, and the attending physician, C.E. Bruck, M.D., noted that she had a hematoma on the left frontal region of her scalp and that "post concussive syndrome" seemed "probable"; he recommended a neurology consult for her dizziness. A CT scan disclosed "[n]o underlying calvarial abnormality" and no intracranial abnormalities. Gregory J. Dardas, M.D., who performed the neurological consult, noted that Karen Ballard "exhibited some features of both anterograde and retrograde amnesia . . . ." Following an examination just before her release on January 6, 2003, Dr. Dardas indicated that Karen Ballard was "feeling well in general," with a sore arm, tenderness around her neck, and "brief movement induced vertigo," but he stated that she was "neurologically asymptomatic." Dr. Dardas suspected that her vertigo would gradually resolve.

Karen Ballard returned to the emergency room two days after her discharge with complaints of nausea and vomiting, which staff attributed to a Vicodin prescription. A second CT scan disclosed no new problems. Karen Ballard followed up with Dr. Dardas on January 17, 2003, and his notes indicated that "[h]er symptoms, neurologically, have all resolved completely, except she has some movement induced vertigo . . . . [that] is becoming less severe, and shorter [with] time." Dr. Dardas also indicated that her fractured sternum and resultant pain had made work "a little bit difficult for her." Other than a "resolving . . . hematoma," a neurological examination disclosed no abnormalities. Dr. Dardas opined that a prescription to treat her vertigo seemed "impractical, since the symptoms [were] so brief." He further noted, "I suspect her neurological prognosis will be excellent."

Karen Ballard again met with Dr. Dardas on March 21, 2003. His report indicated that her vertigo had resolved, but she had "a constant-daily headache, but it is something that she can handle with ES Tylenol." According to Dr. Dardas' notes, she also had an occasional, lancinating pain, coming from a branch of her left trigeminal nerve, and she experienced the pain "every few days . . . and [it would] last a few pulses and then . . . stop." Dr. Dardas also indicated that the lancinating pain was "not something that [was] producing a significant functional or social impediment to her daily life." Karen Ballard indicated that she had some difficulty sleeping because her two-year-old son was "still having difficulties after the accident." Her neurological examination listed no abnormalities but noted "[s]he does have an altered sense of sensation of the first division of the left trigeminal nerve . . . , but [she] still can discern sharp and dull, even in the most densely affected areas." Dr. Dardas opined that all of her symptoms related to her closed-head injury "seem[ed] to be resolving [except for] the lancinating pain in her forehead." During two more follow-up appointments on June 20, 2003 and October 2, 2003, Karen Ballard indicated that she had begun experiencing dysesthesia (a tingling sensation) in her left forehead and scalp, which was triggered by touch. Notably, in his June 20 examination

notes, Dr. Dardas stated that Karen Ballard's closed-head injury and post concussive syndrome were "resolved."[2]

The Ballards filed suit, seeking first-party, no-fault benefits, uninsured motorist benefits, and loss of society and companionship compensation, and all claims were sought on behalf of both plaintiffs, since both were injured and allegedly lost society and companionship from the other.[3] During her deposition, Karen Ballard testified that other than "minor aches and pains," her injuries consisted of her fractured sternum and damages to her left trigeminal nerve. Karen Ballard alleged that the nerve damage caused daily headaches for about one or two months after the accident and then ceased. After that, she began suffering the dysesthesia in her scalp that occurred when she brushed her hair but immediately ceased when she stopped touching her scalp, and this condition continued at least until the time of her deposition. Karen Ballard indicated that her headaches did not stop her from doing anything, and she agreed that she could still function when she had them. Also, Karen Ballard testified that, although heavy lifting and vacuuming had irritated her fractured sternum and continued to do so at least until the time of her deposition, she worked through the pain. She agreed that these problems did not prevent her from accomplishing her normal activities, such as lifting her laundry basket or her son. She answered affirmatively when asked if she could "go back to work and do pretty much what [she was] doing before the accident" by one month after the accident, and she also indicated that by then she could dress, cook, care for her children, and that her injuries did not interfere with any of her hobbies.

Karen Ballard also testified that the repetitive motion caused by her job as a manicurist would occasionally irritate her sternum. Karen Ballard worked for a beauty and tanning salon owned by her husband as the sole proprietor. It was the sole source of income for the Ballards during all times relevant to this case. Karen Ballard testified that the salon had been closed completely for two weeks after the accident, that she had missed one month of work, and that she returned to work part time in February, one month after the accident. Karen Ballard's primary care physician, Adam Kandulski, M.D., opined that the two weeks of work the Ballards missed following accident was "essential for complete recovery."

Farm Bureau sought summary disposition of Karen Ballard's uninsured motorist claim and Arthur Ballard's loss of society and companionship claim under MCR 2.116(C)(10), arguing that Karen Ballard's remedy was limited to the no-fault act because her injuries did not satisfy the tort threshold under MCL 500.3135. The trial court denied Farm Bureau's motion, first

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[2] Karen Ballard saw other doctors during the same time she was treated by Dr. Dardas. We focus, however, on Karen Ballard's visits with Dr. Dardas because the Ballards' argument on summary disposition below relied almost exclusively on her visits with Dr. Dardas as evidence following her hospitalization that showed her injuries. Moreover, we have reviewed all of the other doctors' notes and have concluded that these records add nothing to the analysis that has not been adequately summarized by Dr. Dardas.

[3] The Ballards also sought *underinsurance* compensation from Farm Bureau as an alternative to their uninsured benefits claim, alleging that Farm Bureau possibly insured Drouse also, but it had denied coverage. But this underinsurance claim has not been raised before this Court.

concluding that *Kreiner v Fischer*,[4] was inapplicable to Karen Ballard's claim for first-party, no fault benefits. The trial court then found that even though *Kreiner* applied to Karen Ballard's uninsured motorist claim,[5] there was still a genuine issue of material fact regarding her injuries that prohibited the trial court from granting summary disposition. The trial court explained that summary disposition was inappropriate under MCL 500.3135(2)(a)(ii) because the facts indicated that Karen Ballard sustained a closed-head injury. More specifically, the trial court concluded that "[t]here is no allegation (much less evidence) indicating that plaintiff Karen Ballard is unable to satisfy the provision[,]" noting the statute's instruction that a question of fact "is created if a licensed allopathic or osteopathic physician . . . testifies under oath that there may be a serious neurological injury." The trial court further found significant that Karen Ballard had provided authority[6] indicating that her "other, non-closed-head-related injuries satisfy the threshold of the No-Fault Act even under *Kreiner*."

II. Summary Disposition

A. Standard Of Review

In reviewing a decision under MCR 2.116(C)(10), we consider all documentary evidence in the light most favorable to the nonmoving party, affording all reasonable inferences to the nonmovant to determine whether there is any genuine issue of material fact that would entitle the nonmoving party to judgment as a matter of law.[7] "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists"[8] Mere speculation and conjecture are not sufficient to establish a genuine issue of material fact.[9]

We review de novo the trial court's ruling on a motion for summary disposition.[10] Whether an alleged serious impairment of body function affects a plaintiff's general ability to lead her normal life is also a question of law that we review de novo.[11]

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[4] *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).

[5] Citing *Auto Club Ins Ass'n v Hill*, 431 Mich 449, 463; 430 NW2d 636 (1988).

[6] Citing *Williams v Medukas*, 266 Mich App 505; 702 NW2d 667 (2005), and *Luther v Morris*, unpublished opinion per curiam of the Court of Appeals, issued February 5, 2004 (Docket No. 244483), vacated 471 Mich 908 (2004).

[7] *Knauff v Oscoda Co Drain Comm'r*, 240 Mich App 485, 488; 618 NW2d 1 (2000); *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 357-358; 597 NW2d 250 (1999).

[8] *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

[9] *Detroit v Gen Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998).

[10] *Wilcoxon*, *supra* at 357.

[11] *Kreiner*, *supra* at 121.

B. MCL 500.3135(2)(a)(ii)

The trial court denied summary disposition under MCL 500.3135(2)(a)(ii) because Karen Ballard suffered a closed-head injury and because Farm Bureau had not presented any evidence that the Ballards would be unable to offer appropriate expert testimony that she suffered a serious neurological injury.[12] Farm Bureau argues that the "under oath" requirement of MCL 500.3135(2)(a)(ii), in the summary disposition context, requires at least an affidavit from an appropriate expert opining that there may be a serious neurological injury. The Ballards counter that neither MCL 500.3135(2)(a)(ii) nor the rules applicable to a motion for summary disposition under MCR 2.116(C)(10) require such an affidavit and that the trial court could consider all documentary evidence on this issue.

We first find significant that the plain language of MCL 500.3135(2)(a)(ii)[13] requires that the relied-upon expert testimony be made "under oath," or accompanied by a sworn statement to speak the truth.[14] We further find significant that the principles governing review of a motion for summary disposition brought under MCR 2.116(C)(10), require that the nonmoving party show that a genuine issue of disputed fact exists and produce admissible evidence to establish those disputed facts.[15] "A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules."[16] Reading these MCL 500.3135(2)(a)(ii) and MCR 2.116(C)(10) requirements together, we conclude that a party relying on MCL 500.3135(2)(a)(ii) to oppose a (C)(10) motion must provide some testimony under oath, e.g., a sworn affidavit or deposition, from an appropriate expert opining that the plaintiff may have suffered a serious neurological injury.[17]

The Ballards argue for the first time on appeal that, if we conclude that MCL 500.3135(2)(a)(ii) creates an affidavit requirement in the summary disposition context, such a requirement impermissibly conflicts with the MCR 2.116(C)(10) standard that a nonmovant may rely simply on any admissible documentary evidence to survive dismissal.[18] And, according to

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[12] MCL 500.3135(2)(a)(ii) provides that "for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury."

[13] *Churchman v Rickerson*, 240 Mich App 223, 228; 611 NW2d 333 (2000) ("If the plain and ordinary language of the statute is clear, judicial construction is normally neither necessary nor permitted.").

[14] *Random House Webster's College Dictionary*, pg 900 (1997).

[15] *Meagher v Wayne State Univ*, 222 Mich App 700, 719; 565 NW2d 401 (1997); *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994); see § II.A, *infra*.

[16] *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

[17] See *Churchman*, *supra* at 231-232.

[18] MCR 2.116(G)(4); *Maiden*, *supra* at 120.

the Ballards, under MCR 1.104, the court rule trumps any statutory, sworn affidavit requirement.[19] But, in addition to being unpreserved,[20] this claim is without merit.

A court rule prevails over a conflicting statute if the rule governs practice or procedure before the courts.[21] But to be conflicting, the statute must also effectively govern practice or procedure.[22] And while the Michigan Supreme Court, through its court rules, may indicate "how" an action is to be brought, the Legislature specifies "what" actions may be brought.[23] In the context of a no-fault action, the Legislature, by requiring sworn testimony of a serious neurological injury to create a question of fact regarding whether an injured person has suffered serious impairment of body function, is not attempting to affect court practice or procedure—it is merely delineating in further detail "what" actions may be brought. That is, MCL 500.3135 governs what actions may be brought for noneconomic tort damages under the no-fault act. To bring such an action, the plaintiff must show that she has suffered a serious impairment of body function, and, absent a material question of fact concerning the nature and extent of the person's injuries, it is a question of law for the trial court to determine whether that requirement has been satisfied.[24] Thus, ordinarily, a plaintiff, as the opposing party to a (C)(10) motion, would be required to establish a factual dispute on that issue by presenting sufficient admissible documentary evidence of a serious impairment of body function. But MCL 500.3135(2)(a)(ii) creates a specific, special provision for situations where the plaintiff has sustained a closed-head injury,[25] and in doing so the Legislature is neither restricting the plaintiff's ability to survive a (C)(10) motion nor restricting any prospective claim that the plaintiff would otherwise be entitled to bring.[26]

Additionally, as Farm Bureau points out, "'if a particular court rule contravenes a legislatively declared principle of public policy, having as its basis something other than court

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[19] MCR 1.104 provides: "Rules of practice set forth in any statute, if not in conflict with any of these rules, are effective until superseded by rules adopted by the Supreme Court." See *People v McCoy*, 179 Mich App 559, 562; 446 NW2d 306 (1989) ("Where there is a direct conflict between a court rule and a statute, the court rule is to be deemed controlling."); see also Const 1963, art 6, § 5; MCL 600.223.

[20] *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003).

[21] *Krajewski v Krajewski*, 25 Mich App 407, 414-415; 335 NW2d 923 (1983), set aside on other grounds 420 Mich 729 (1984).

[22] *Clemons v Detroit Dep't of Transportation*, 120 Mich App 363, 372; 327 NW2d 480 (1982).

[23] *Id*. at 371-372.

[24] MCL 500.3135(2)(a).

[25] *Churchman, supra* at 226; *Kreiner, supra* at 132 n 15.

[26] See *Churchman, supra* at 232 (stating that a plaintiff who fails to satisfy the closed-head injury exception can alternatively argue that her closed-head injury constituted a general serious impairment of body function that interfered with her general ability to lead her normal life).

administration . . . the [court] rule should yield.'"[27] The Michigan Supreme Court has explained that the public policy behind limiting recovery for noneconomic loss in cases such as the present matter, is ensuring the economic viability of the no-fault insurance system.[28] Thus, MCL 500.3135, "[s]een in the light of the policy it embodies, . . . represents far more than merely a legislative attempt to regulate the day-to-day procedural operation of the courts."[29] Accordingly, we cannot conclude that the sworn testimony requirement of MCL 500.3135(2)(a)(ii) impermissibly conflicts with the MCR 2.116(C)(10) standard that a nonmovant may rely on any admissible documentary evidence to survive dismissal.

In any event, none of the Ballards' *unsworn* documentary evidence establishes that an appropriate expert, or any physician who treated her, believed that Karen Ballard may have suffered a serious neurological injury. At best, Dr. Dardas opined that Karen Ballard suffered a closed-head injury. However, in *Churchman*, this Court held that MCL 500.3135(2)(a)(ii) "requires more than a diagnosis that a plaintiff suffered a closed-head injury."[30] More specifically, in the summary disposition context, "the plain language of the statute requires some indication by the doctor providing testimony that the injury sustained by the plaintiff was severe."[31] Notably, this Court in *Churchman* concluded that the plaintiff's proffered evidence was insufficient to satisfy MCL 500.3135(2)(a)(ii) even though the evidence established that the plaintiff had suffered "a traumatic brain injury."[32] This Court indicated that to be "serious," as required by the statute, the injury should be "'dangerous; potentially resulting in death or other severe consequences . . . .'"[33] Here, Dr. Dardas merely described Karen Ballard's closed-head injury as "mild."

Therefore, because the Ballards have not provided sufficient evidence—testimony taken under oath—that Karen Ballard may have suffered a serious neurological injury, we conclude that the trial court committed error requiring reversal when it held that summary disposition was inappropriate because the Ballards *might* be able to comply with MCL 500.3135(2)(a)(ii).

C. Serious Impairment Of Body Function

The Ballards argue that the trial court should have summarily denied Farm Bureau's motion for summary disposition because the motion requested dismissal of Karen Ballard's claims for first-party, no-fault benefits, which, as opposed to uninsured motorist benefits, are not

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[27] *McDougall v Schanz*, 461 Mich 15, 31; 597 NW2d 148 (1999), quoting Joiner & Miller, *Rules of practice and procedure: A study of judicial rule making*, 55 Mich L R 623, 635 (1957).

[28] *Cassidy v McGovern*, 415 Mich 483, 500; 330 NW2d 22 (1982).

[29] *People v McKenna*, 585 P2d 275, 278 (1978), quoted with approval in *McDougall*, *supra* at 32.

[30] *Churchman*, *supra* at 229.

[31] *Id*.

[32] *Id*. at 229-230.

[33] *Id*. at 230, quoting Black's Law Dictionary (7th ed), p 1371.

subject to the no-fault threshold injury requirements. However, we will not allow form to trump substance in this case. Farm Bureau's central argument for dismissal was that Karen Ballard's injuries did not meet the threshold inquiry and, as the Ballards concede, the general threshold requirements of MCL 500.3135 apply when a plaintiff is seeking recovery of noneconomic damages under a claim for uninsured motorist benefits.[34] Further, it is settled that a plaintiff who fails to satisfy the closed-head injury exception can alternatively argue that her closed-head injury constituted a general serious impairment of body function that interfered with her general ability to lead her normal life.[35] Moreover, the trial court properly ruled that Karen Ballard's claims for first-party, no-fault benefits were not subject to the threshold injury requirements under MCL 500.3135, before turning to the uninsured claims. A party in whose favor the trial court entered an order is not an aggrieved party for purposes of appeal.[36] We, therefore, affirm that portion of the trial court's order.

In response to Farm Bureau's argument that Karen Ballard's injuries did not meet the threshold inquiry, the Ballards alternatively argue that Karen Ballard's closed-head injury, taken together with her other injuries from the auto accident, did constitute a serious impairment of body function that interfered with her general ability to lead her normal life.

(1) *Kreiner* Principles

A person "remains subject to tort liability for noneconomic loss caused by his or her ownership maintenance, or use of a motor vehicle . . . if the injured person has suffered . . . serious impairment of body function . . . ."[37] "'[S]erious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life."[38] "Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if . . . the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected . . . ."[39]

In determining whether the course of the plaintiff's normal life has been affected, the trial 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.[40] A de minimus effect on the plaintiff's life is insufficient to meet

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[34] *Auto Club Ins Ass'n*, supra at 455-456.

[35] *Churchman*, *supra* at 232.

[36] *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 385; 600 NW2d 406 (1999).

[37] MCL 500.3135(1); *Kreiner*, *supra* at 129.

[38] MCL 500.3135(7); *Kreiner*, *supra* at 129, 130.

[39] *Kreiner*, *supra* at 131.

[40] *Id*. at 133.

the inquiry.[41] "[M]inor changes in how a person performs a specific activity may not change the fact that the person may still 'generally' be able to perform that activity."[42]

Although not an exhaustive list, several objective factors can be considered when determining 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."[43] The focus, however, is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body.[44]

(2) Application Of *Kreiner* Principles

Farm Bureau neither disputes the nature and extent of Karen Ballard's injuries nor that her injuries were objectively manifested, and instead focuses on whether her general ability to lead her life has been affected. And even to the extent that there is some dispute concerning the nature and extent of Karen Ballard's injuries (i.e., the severity of her head injury), the dispute is not material because we conclude that Karen Ballard's general ability to lead her life has not been affected.[45]

Comparing Karen Ballard's activities before and after the accident shows that her injuries did not interfere with her general ability to lead her normal life. While Karen Ballard stated during her deposition that she experienced some initial discomfort and limitations, she acknowledged that those conditions had either resolved or had not prevented her from doing the things she wanted to do. She admitted that while certain activities irritated her fractured sternum, she was able to work through the irritation caused by her injuries and was able to accomplish *all* of her day-to-day activities. She similarly testified that her allegedly resultant panic attacks did not prevent her from driving. Also, there was no testimony that her injuries interfered with any of her hobbies. The Ballards argue that Karen Ballard's alleged pain while performing her normal activities is somehow sufficient to show that her injuries adequately interfered with her general ability to lead her normal life. This argument, however, ignores the established rule that the proper focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually and significantly affect the functioning of the body.[46] Here, we find no evidence that Karen Ballard was precluded from engaging in any activities. And although Karen Ballard argues that "her accident-related injuries continue to effect [sic] the quality of her life and her productivity[,]" mere damage to one's quality of life is insufficient to meet the threshold

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[41] *Id*.

[42] *Id*. at 131.

[43] *Id*. at 133.

[44] *Miller v Purcell*, 246 Mich App 244, 249; 631 NW2d 760 (2001).

[45] See *Kreiner*, *supra* at 136 n 21.

[46] *Miller*, *supra* at 249.

requirement where the injury does not affect the *course* or *trajectory* of the plaintiff's normal life.

Although the Ballards also argue that Karen Ballard's dysesthesia interfered with her general ability to lead her normal life because it caused her excruciating pain whenever she touched her scalp or forehead, there is no support for this allegation in the record. Indeed, during her deposition, Karen Ballard described the condition as merely a tingling sensation caused by touch that immediately ceased when she broke contact with the affected area. Further, there was no indication that the dysesthesia prevented Karen Ballard from doing anything that she had done before the accident; notably, although she experienced the dysesthesia while brushing her hair, she did not allege that the condition prevented her from brushing her hair. Accordingly, we conclude that this condition has not affected the course or trajectory of her life.

The Ballards next argue that Karen Ballard's loss of one month of work followed by one month of part-time work demonstrates that her injuries interfered with her general ability to lead her normal life. However, "[s]elf-imposed restrictions," even if based on real pain, are not sufficient to establish residual impairment; rather, the restrictions must be "physician-imposed."[47] The Ballards have presented no evidence that Karen Ballard's work loss was based on a physician-imposed restriction. And while the Ballards did produce a letter dated March 8, 2004, from Karen Ballard's primary-care physician, opining that "the two weeks [the Ballards] didn't work following the motor vehicle accident was essential for complete healing[,]" there is no indication in the record that that time off was physician imposed at the time it occurred. Regardless, even assuming that all of Karen Ballard's work loss was physician imposed, one month of lost work followed by one month of part-time work did not interfere with her general ability to lead her normal life. We note that an eight-week loss of *all work* followed by three-weeks of part-time work was deemed insufficient to meet this threshold in *Kreiner*.[48]

The Ballards additionally argue that their tax returns showing a 40 percent decrease in their business income for the year following the accident somehow demonstrates that Karen Ballard's injuries interfered with her general ability to lead her normal life. But, even assuming some causal link between the two events (the injury and the decreased income), this mere "negative impact," as termed by the Ballards, is not sufficient to demonstrate that Karen Ballard's injuries impaired her general ability to lead her normal life.

Although some aspects of Karen Ballard's life have been affected, we conclude that the course or trajectory of her life has not been affected. There is no indication that Karen Ballard suffers from any physical disability that prevents her from engaging in work or other daily activities; any residual restrictions on Karen Ballard's ability to perform her daily activities are self-imposed. We, therefore, conclude that Karen Ballard failed to present sufficient evidence to show that her injuries were so life altering as to affect her general ability to lead her normal life as defined in *Kreiner*. Therefore, the trial court erred in concluding that the Ballards presented

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[47] *Kreiner*, *supra* at 133 n 17.

[48] *Kreiner*, *supra* at 134-135.

sufficient authority that Karen Ballard's injuries met the threshold requirement under MCL 500.3135(1).

D. Constitutional Claim

The Ballards also mention that "[t]he routine grant of motions for summary disposition serves to undermine the integrity of the judicial process which is rooted in the constitutional right to trial by jury." However, we interpret the above statement as merely an unpreserved, public policy argument without proper legal support.[49]

E. Loss Of Consortium

Because Arthur Ballard's claims for loss of services and support are derivative of Karen Ballard's claims and are similar noneconomic claims subject to the threshold requirements of MCL 500.3135, these claims must also be dismissed.[50]

F. Conclusion

We affirm the portion of the trial court's order holding that Karen Ballard's claims for first-party, no-fault, noneconomic benefits were not subject to the threshold injury requirements. But we reverse the trial court's holding that Karen Ballard suffered any threshold injuries sufficient to satisfy MCL 500.3135, including subsection (2)(a)(ii).

We reverse in part, affirm in part, and remand for entry of an order of dismissal in Farm Bureau's favor. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Peter D. O'Connell

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[49] *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Higgins Lake Property Owners Ass'n*, *supra* at 117; *McCartney v Attorney General*, 231 Mich App 722, 725; 587 NW2d 824 (1998).

[50] See *Rusinek v Schultz, Snyder and Steele Lumber Co*, 411 Mich 502, 508; 309 NW2d 162 (1981) (explaining that a loss of consortium claim derives from an injured spouse's claim).