

STATE OF MICHIGAN  
COURT OF APPEALS

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REBECCA BUSH,

Plaintiff-Appellant and Cross-  
Appellee,

v

FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant-Appellee and Cross-  
Appellant.

and

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant.

UNPUBLISHED

March 30, 2006

No. 257757

Allegan Circuit Court

LC No. 03-034712-NI

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

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of Farm Bureau General Insurance Company (hereinafter defendant). Plaintiff was injured in a motor vehicle accident caused by an underinsured motorist, with whom she settled for the policy limits in a separate action pursuant to case evaluation, and plaintiff was covered by insurance issued by defendant that included underinsured motorist protection in the amount of \$50,000. The trial court found, as a matter of law, that plaintiff had not suffered a serious impairment of body function under the criteria set forth in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). Plaintiff challenges that ruling on appeal, and defendant cross appeals, arguing, in part, that the trial court erred in ruling that plaintiff's cause of action was not barred by the limitations period contained in the insurance contract. We affirm, holding that the trial court did not err in concluding that plaintiff had not suffered a serious impairment of body function.

Plaintiff first argues on appeal that because the trial court stated that it had no choice but to grant defendant's motion, it failed to exercise its discretion. However, when read in context,

the trial court's ruling reflects an adherence to stare decisis, not a failure to exercise discretion. The trial court referred several times to the binding precedent set forth in *Kreiner, supra*, and stated that the injuries in this case simply did not arrive at the threshold as defined in that case. Therefore, plaintiff's argument is without merit, and the trial court did not fail to exercise its discretion.

Plaintiff next asserts that a factual dispute existed as to the nature and extent of her injuries, and the trial court therefore erroneously granted defendant's motion for summary disposition as a matter of law. We disagree. Defendant did not dispute plaintiff's injuries below or on appeal, but assumed for the purposes of argument that the nature and extent of plaintiff's injuries were as she described. Therefore, there was no factual dispute, and the trial court was required to determine whether plaintiff had suffered a serious impairment of body function as a matter of law, making plaintiff's argument meritless. MCL 500.3135(2)(a)(i). Furthermore, the trial court appropriately granted summary disposition on the grounds that plaintiff had failed to demonstrate a serious impairment of body function because her general ability to live her normal life had not been affected, as defined in *Kreiner*.

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). This definition is broken down into a three-prong test requiring (1) an objectively manifested impairment; (2) the impairment must be of an important body function; and (3) it must affect a person's general ability to lead his or her normal life. *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 684; 671 NW2d 95 (2003), rev'd on other grounds 471 Mich 109 (2004). It is the third and final prong of the analysis that is at issue here.

A non-exhaustive list of factors to consider when making a determination whether plaintiff's injuries affected her ability to lead her normal life include "(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." *Kreiner, supra*, 471 Mich at 133. Whether plaintiff's ability to lead her normal life has been affected must be considered in the totality of the circumstances and no one factor in and of itself is determinative. *McDaniel v Hemker*, 268 Mich App 269, 285; 707 NW2d 211 (2005).

Plaintiff's injuries included multiple fractures to her face and eye socket that required surgical repair. The surgery was done within two weeks of the accident, however, and after wearing an eye patch for a month and taking pain medication for two months, plaintiff was able to continue her high school career and graduate on time. She also had a "slight fracture" of the jaw that required her to wear braces. However, she was able to graduate high school on time with her class, and she now works full time. While she complains of some continuing pain, there are no medical restrictions on her leisure or work activities. Dr. Telman, the treating surgeon whose deposition is relied on by plaintiff, testified that plaintiff was not under any restrictions, and that she should be able to engage in normal activities. There is no indication that plaintiff is physically unable or precluded by pain from functioning in her daily life or engaging in normal activities. Although plaintiff testified that she no longer played softball, football, roller hockey, ice hockey, and wrestling since the accident, she also testified that she did not engage in these

sports because she was afraid of being injured again, not because the injuries prevented her from doing so. Plaintiff never experienced any effects such as a loss of sight, smell, or hearing. In short, under the analytical framework set forth by our Supreme Court in *Kreiner*, plaintiff's injuries do not meet the threshold requirements because they do not affect her general ability to live her normal life.

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Patrick M. Meter