

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EMILY JAYNE WHEELER,  
Plaintiff-Appellee,

UNPUBLISHED  
March 30, 2006

v

MELANIE SUE CADY,  
Defendant-Appellant.

No. 263803  
Otsego Circuit Court  
LC No. 04-010746-NI

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Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals by leave granted from the order denying her motion for summary disposition, brought pursuant to MCR 2.116(C)(10), on plaintiff's claim for damages following an automobile accident. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant drove her car into the rear end of plaintiff's car while plaintiff's car was stopping at an intersection. Plaintiff was taken to an emergency room, where she complained of a minor laceration to her right hand and neck pain. She was diagnosed with mild neck strain. Her treating physician diagnosed her with compressed discs in her neck, prescribed pain medication, and referred plaintiff to a chiropractor. Her physician also told her not to work in her former position as a landscaper but allowed her to continue her work in a restaurant. Plaintiff stopped taking the pain medication prescribed to her after a week because of its side effects. She treated with a chiropractor for several months and then stopped. Several months later, plaintiff experienced intense pain and numbness in her right arm after shoveling snow. She returned to her physician, who referred her to a physical therapist.

Plaintiff continued to experience numbness in her right arm and pain in her neck, back, and shoulder when lifting or when reading while seated. She also complained of headaches associated with lifting, swimming, and driving. Plaintiff claimed that she no longer played tennis, swam, rode mountain bikes, or skied downhill because these activities caused pain. She also said that she no longer took long road trips because her arms would go numb. A therapist advised plaintiff not to swim or dance and prescribed exercises for the numbness. However, no physician ever specifically directed plaintiff not to engage in any particular sport.

Later, plaintiff was referred to a board certified physician in physical medicine and rehabilitation. This physician diagnosed chronic cervical strain from whiplash and

recommended pain medication, physical therapy, and a lower extremity aerobics program. He also thought that plaintiff was depressed and that this condition was delaying her recovery and advised counseling and medication. Plaintiff initially took the medication, but then she discontinued it because of its side effects.

Plaintiff sued defendant for serious impairment of an important body function under the Michigan No-Fault Act, MCL 500.3101 *et seq.* Defendant moved for summary disposition under MCR 2.116(C)(10), claiming that plaintiff's injuries did not constitute a substantial impairment. The circuit court denied defendant's motion, finding that plaintiff's injuries impaired her general ability to lead her normal life. Defendant appealed by leave granted, arguing that plaintiff's injuries do not constitute a serious impairment of an important body function that affects her general ability to lead her normal life.

A plaintiff may recover for serious impairment of an important body function. MCL 500.3135(1) provides: "(1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." A serious impairment of a body function is statutorily defined in MCL 500.3135(7) as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." As explained in *Kreiner v Fischer*, 471 Mich 109, 132-134; 683 NW2d 611 (2004), in order to determine whether a plaintiff has suffered a serious impairment of an important body function, the lower court should consider the plaintiff's life before and after the injury as well as the significance of any affected aspect of the plaintiff's life. These relevant, but non-dispositive factors include: (1) "the nature and extent of the impairment," (2) "the type and length of treatment required," (3) "the duration of the impairment," (4) "the extent of any residual impairment," and (5) "the prognosis for eventual recovery." *Id.* at 133.

Where, as here, the parties do not dispute the nature and extent of a plaintiff's injuries, whether a plaintiff has suffered a serious impairment of an important body function is a question of law. MCL 555.3135(2). In this case, the parties dispute whether plaintiff's injuries constitute a serious impairment of an important body function.

Application of the five *Kreiner* factors to the facts of this case leads us to conclude as a matter of law that plaintiff did not suffer a serious impairment of an important body function. Plaintiff suffered compressed discs and soft tissue strains in her neck, shoulders, and back. Although plaintiff's treating physician concluded plaintiff was not able to return to her position as a landscaper, within eight weeks of the accident plaintiff's treating physician released her to perform light housekeeping and her restaurant employment. On appeal, plaintiff has not identified any physician-imposed restrictions on her employment. Both the "type and length of treatment required" was limited. After plaintiff's initial examination and treatments for mild neck strain, she primarily treated with a chiropractor from June to October 2001, and thereafter she received some physical therapy. Plaintiff required no surgery. Although pain medication was prescribed, plaintiff did not use it because of its side effects and is apparently able to manage her pain without it. Regarding "the duration of the impairment," plaintiff continues to complain of pain associated with her work and some avocational activities, like reading, car trips, tennis, skiing, mountain bicycling, playing with her nieces, dancing, and swimming. Plaintiff also complains of numbness associated with reading and riding in a car. No physician has restricted

her from pursuing these activities. Generally, subjective complaints of pain do not constitute an objectively manifested condition and cannot establish the existence of a serious impairment of a body function. *Garris v Vanderlaan*, 146 Mich App 619, 622; 381 NW2d 412 (1985). Also, self-imposed limitations are typically not sufficient to create a serious impairment of a body function. *Kreiner, supra*, 471 Mich at 133, n17. Regarding “the extent of any residual impairment,” we note that plaintiff continues to complain of pain and numbness. But Dr. Gast’s final impression of plaintiff’s condition consisted only of myofacial pain and tenderness at the end points of plaintiff’s cervical range of motion.<sup>1</sup>

In sum, the evidence does not show that plaintiff’s injuries affected her general ability to lead her normal life. Consequently, upon de novo review of the record, we conclude that plaintiff did not suffer a serious impairment of an important body function. The trial court erred in denying defendant’s motion for summary disposition.

We reverse the circuit court’s denial of defendant’s motion and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

Reversed and remanded.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra

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<sup>1</sup> We cannot comment on the fifth *Kreiner* factor because there is no record medical evidence addressing any physician’s “prognosis for eventual recovery” regarding plaintiff.