STATE OF MICHIGAN

COURT OF APPEALS

SUZANNE REGNERUS,

Plaintiff-Appellant,

v

THOMAS PASSOW,

Defendant-Appellee.

UNPUBLISHED
April 4, 2006

No. 259017
Saginaw Circuit Court
LC No. 03-049076-NI

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

In this threshold case under the no-fault act, MCL 500.3101 *et seq.*, plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiff suffered injuries when she was struck by a car driven by defendant while she was walking in a parking structure. Plaintiff filed suit, asserting both serious impairment of body function and disfigurement. Defendant moved for summary disposition. At the hearing on the motion, and thereafter, only the serious-impairment theory was argued, indicating abandonment of the disfigurement theory. The trial court initially denied the motion; however, after our Supreme Court decided *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), which significantly tightened the requirements for establishing serious impairment of body function, defendant renewed his motion, and the trial court granted it.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim), and (10) (failure to provide evidentiary support). However, the trial court heard arguments in connection with the evidence, and decided the motion accordingly. At issue here, then, is a decision on a (C)(10) motion.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

MCL 500.3135(1) states that 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 . . . ." MCL 500.3135(7) adds that "'serious 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."

Our Supreme Court's decision in *Kreiner, supra*, indicates that the conditions reinstating tort liability under the no-fault act are not lightly to be found. "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" for purposes of establishing a serious impairment. *Id.* at 131. Residual impairments based on perceived pain are a function of "physician-imposed restrictions," not "[s]elf-imposed restrictions." *Id.* at 133 n 17.

In arguing that the trial court erred in granting summary disposition to defendant, plaintiff cites and appends various medical reports, her case-evaluation summary, and the trial court's earlier decision denying summary disposition. The trial court's earlier decision denying summary disposition does not undercut its later decision to grant it, where the latter was based in large part on pertinent new developments in the case law. Plaintiff's case-evaluation summary is pure advocacy, not evidence to rebut a (C)(10) motion. But within that document is the following statement attributed to plaintiff's physician: "With respect to long term prognosis, it would be my expectation that [plaintiff] will always have some impairment as a result of this injury, given the now clear evidence of anatomic alteration." However, "impairment" for general medical purposes is not necessarily the equivalent of serious impairment of body function for purposes of establishing tort liability under the no-fault act.

Plaintiff's medical records include numerous accounts of symptoms, diagnoses, and treatments. But plaintiff fails to detail just what, if anything, within those accounts establishes serious impairment of body function for present purposes. We decline to comb through those records to discover just what within them might call the trial court's decision into question. A party may not leave it to the appellate court to "'unravel and elaborate for him his arguments . . . .'" *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

In the argument section of her brief, plaintiff asserts generally that defendant negligently caused her injuries, and that she is "entitled to relief because [defendant] violated the law and [her] rights." Thereafter plaintiff presents what appears to be a reproduction of her brief in opposition to defendant's original motion for summary disposition, including reliance on this Court's decision in *Kreiner v Fischer (On Remand)*, 256 Mich App 680; 671 NW2d 95 (2003), which, of course, the Supreme Court reversed.

Because plaintiff has added nothing to her original case against summary disposition for defendant, the question is whether plaintiff's successful pre-*Kreiner* position can survive post-*Kreiner*. The trial court thought not. We agree.

Fatal to plaintiff's case is that she fails to point to evidence that her injuries have altered the trajectory of her life. *Kreiner, supra* at 131. She details that she missed eight days of work, and asserts that she has difficulty jogging, swimming, laughing, and playing tennis because of

pain. But, in her deposition, plaintiff confirmed that she was under no medical restrictions, was able to perform all activities at her job, and was not under treatment for any physical problem stemming from the accident. Again, residual impairments based on perceived pain are a function of "physician-imposed restrictions," not "[s]elf-imposed restrictions." *Id.* at 133 n 17.

Because plaintiff's alleged impairments all result from discomfort and not physical inability, *McDanield v Hemker*, 268 Mich App 269, 283-284; 707 NW2d 211 (2005), and do not take the form of physician-imposed restrictions, plaintiff fails as a matter of law to support any claim that the accident involving defendant's driving left her with a serious impairment of body function for purposes of restoring tort liability under the no-fault act.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio