

STATE OF MICHIGAN  
COURT OF APPEALS

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SHARONDA MADKINS,

Plaintiff-Appellant,

v

JOHN TIMOTHY LYNEM and SHERRY  
LYNEM,

Defendants-Appellees,

and

ALLSTATE INSURANCE COMPANY,

Defendant.

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UNPUBLISHED

April 11, 2006

No. 258533

Wayne Circuit Court

LC No. 03-331624-NI

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

PER CURIAM.

In this third-party action to recover noneconomic damages under the no-fault act, plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition and denying plaintiff's cross-motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff challenges the trial court's determination as a matter of law that she did not suffer either a serious impairment of body function or a permanent serious disfigurement. MCL 500.3135(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo the trial court's order granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). The issue whether a person has suffered a serious impairment of body function or a permanent serious disfigurement is a question of law for the trial court to decide if the court determines that there is no factual dispute concerning the nature and extent of the person's injuries, or that there is a factual dispute concerning the nature and extent of the person's injuries but the dispute is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a).

“‘[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.” MCL 500.3135(7). To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person’s entire normal life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004).

In this case, plaintiff was struck by an automobile as she crossed the street. Plaintiff fractured her ankle, which required surgery. Plaintiff used crutches to ambulate for approximately three months. She attended physical therapy twice a week for approximately two months. At a post-operative evaluation approximately four months after the accident, plaintiff indicated that she was not experiencing any pain. She reported improved range of motion with physical therapy. The medical report states, “She is back to full weightbearing and she has no limitations with her activity,” and “We have no limitations on weightbearing.” With respect to changes in her activities, plaintiff testified that she used to play basketball every other weekend with family, but at the time of her deposition (ten months after the accident), she had not played basketball since the accident. Before the accident, she roller-skated every weekend. She tried to skate in October 2003, but “[i]t did not go well. I couldn’t stay on the skates long.” Plaintiff also testified that she was unable to stay on her feet for a long period of time; after eight hours, it “just swells real big.” She testified that she discontinued working at a warehouse after two days because of the swelling. Plaintiff testified that the injury affected her ability to walk, inasmuch as she continued to walk with a limp and did not have “that much flexibility” in her ankle. A report prepared after an independent medical examination, performed ten months after the accident, indicates that plaintiff did not have “any appreciable limp or lurch while walking.” The report also states that “[s]he does have slight stiffness residual, but her range of motion is still clearly within the range of physiologic limits and should not present any problem whatsoever. . . . I do think that she is essentially at her pre-injury level of functioning with regards to the demands that she was placing upon her ankle prior to her injury.”

We agree that the evidence does not establish a serious impairment of an important body function. The injury caused the greatest degree of impairment during the period in which plaintiff ambulated with crutches. “[A]n impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff’s life is extensive.” *Williams v Medukas*, 266 Mich App 505, 508; 702 NW2d 667 (2005). Plaintiff did not present evidence concerning how her life was affected during the period of recuperation. The record in this case does not disclose a level of impairment for a period of time that had an “extensive” effect on plaintiff’s life. *Id.*

Although plaintiff presented evidence concerning changes in her recreational activities, this did not establish a serious impairment of body function. Plaintiff did not indicate that these activities were particularly important to her before the accident. See *Kreiner, supra* at 134 n 19; cf. *Williams, supra* at 509. More importantly, plaintiff’s decision to refrain from those activities is not sufficient to establish residual impairment. *Kriener, supra* at 133 n 17. A self-imposed restriction may be considered where it is not based on pain but rather because the plaintiff is physically incapable of performing the activity. *McDaniel v Hemker*, 268 Mich App 269, 283; 707 NW2d 211 (2005); see also *Williams, supra* at 508-509 (indicating that this Court may consider changes in activities that are consistent with a physician’s observation of limited movement). Plaintiff did not offer evidence linking her decision not to engage in basketball and

roller-skating to a physician's observation of limited movement or a physical incapability of performing some motion. She did not present evidence of any physician-imposed restrictions. Nor did she specify the reason that she discontinued the activities. In the absence of physician-imposed restrictions or restrictions that are attributable to physical incapacity, the change in activities does not show residual impairment.

Plaintiff's deposition testimony that she limped also fails to establish a serious impairment of body function. Even assuming there was a limp from plaintiff's perspective, the limp was not "appreciable" to the physician who conducted the independent medical examination. A limp that is not appreciable to observers does not provide a basis for concluding that the course of plaintiff's normal life has been affected. *Kreiner, supra* at 130-131. Similarly, plaintiff's testimony that her ankle swelled if she stood for more than eight hours does not show that the course of her normal life has been affected.

Finally, plaintiff claims that there is a question of fact concerning whether the surgical scar on her ankle constitutes "permanent serious disfigurement." MCL 500.3135(1). This issue properly may be determined as a matter of law. MCL 500.3135(2)(a). The photograph submitted by plaintiff shows that the surgical scar on her ankle is not a permanent *serious* disfigurement. The location of the scar on the inside portion of the ankle and its small size makes it essentially inconspicuous to a casual observer.

Affirmed.

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