

STATE OF MICHIGAN
COURT OF APPEALS

KRISTA L. BALLEY, as Next Friend of TRACY
L. BALLEY,

UNPUBLISHED
June 22, 2006

Plaintiff-Appellant,

v

ALLIED INSURANCE COMPANY and
NATIONWIDE INSURANCE COMPANY OF
AMERICA,

No. 259487
Saginaw Circuit Court
LC No. 03-047083-NZ

Defendants-Appellees.

Before: Fort Hood, P.J., and Cavanagh and Servitto, JJ.

PER CURIAM.

Plaintiff¹ appeals as of right from a judgment of no cause of action entered following a bench trial in this automobile underinsurance coverage dispute. We affirm.

Plaintiff argues that the trial court erred in its finding that her posttraumatic stress disorder (PTSD) did not meet the no-fault threshold for serious impairment of body function because it did not affect her general ability to lead her normal life.² We disagree. We review the

¹ We refer to Krista Balley, the real plaintiff in interest, as plaintiff.

² As noted in the trial court's opinion and order, plaintiff recovered benefits through a settlement agreement involving the at-fault driver and the violator of the dram shop act. This action seeks to recoup underinsured motorist benefits. Because automobile underinsurance coverage is not legally mandated, "the scope, coverage, and limitations of underinsurance protection are governed by the insurance contract and the law pertaining to contracts." *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 19; 592 NW2d 379 (1998). It is undisputed that plaintiff is not entitled to coverage under the applicable underinsurance policy unless she suffered injury from the relevant automobile accident that meets the threshold of a "serious impairment of body function" under the no-fault act.

trial court's factual findings for clear error, while questions of law are reviewed de novo. *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 124; 680 NW2d 485 (2004).³

The no-fault act defines “serious impairment of body function” 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). The trial court found that plaintiff suffered an objectively manifested impairment of an important body function in relation to her PTSD. Thus, the issue at hand is whether the trial court erred in finding that this impairment did not affect plaintiff’s general ability to lead her normal life.

Determining whether an impairment affects a plaintiff’s general ability to lead his or her normal life requires “a multifaceted inquiry” that compares “plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). This approach is a balance of subjective and objective inquiries. *Id.* at 121 n 7. As the *Kreiner* Court noted:

[W]hat is “normal” is to be determined subjectively on the basis of plaintiff’s own life and not the life of some objective third party. However, once that is fixed as the base, it is to be objectively determined whether the impairment in fact affects the plaintiff’s “general ability to lead” that life. [*Id.*]

The effect on the plaintiff must be substantial enough to affect the plaintiff’s “general ability to conduct the course” of his or her own life. *Id.* at 133.

The *Kreiner* Court articulated a “nonexhaustive list of objective factors” to assist lower courts in evaluating whether a plaintiff’s injury affected that plaintiff’s “general ability to conduct the course of [her] normal life.” *Kreiner, supra* at 133. These factors 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. [*Id.* (footnote omitted).]

No single factor is meant to be dispositive. *Id.* at 133-134. The inquiry should look at the “totality of circumstances” and should center around the ultimate question of “whether the impairment affects the person’s general ability to conduct the course of his or her normal life.” *Id.* at 134 (internal quotation marks omitted).

³ Plaintiff’s argument to the effect that the trial court’s decision amounted to a directed verdict subject to de novo review is incorrect. The trial court’s opinion following the bench trial includes findings of fact based on the evidence at trial. It simply does not amount to a directed verdict, i.e., a decision based on taking all the evidence in the light most favorable to the nonmoving party without actual fact-finding. See *Merkur Steel, supra* at 123 (“A directed verdict is appropriate only when no material factual questions exist on which reasonable minds could differ.”).

The first factor, the nature and extent of plaintiff's impairment, supports a finding that plaintiff's general ability to lead her normal life was not affected. Plaintiff's impairment did not affect all aspects of her life. Her psychiatrist referred to "triggering effects" that would cause plaintiff to relapse into PTSD symptoms. It may be argued that for over a year the nature and extent of her injuries were quite serious. There was testimony that plaintiff suffered from insomnia, nightmares, poor performance in school, irritability, and loss of friendship. Nonetheless, her PTSD symptoms were not continuously affecting her everyday normal life, but rather, were the result of unpredictable and sporadic triggering effects. The extent of her injuries did not prevent plaintiff from having a dating relationship with a boyfriend and a job, both of which began after her accident. She testified that she did obtain her driver's license and was able to drive. Plaintiff's grades recovered, and she was admitted to a local college.

The second factor concerning the type and length of treatment required also favors defendants. The type of treatment plaintiff requires when her PTSD symptoms recur is medication and therapy.⁴ Neither form of treatment appears so invasive as to affect plaintiff's general ability to conduct the course of her normal life.

We cannot conclude that the trial court clearly erred in assessing the duration of plaintiff's impairment. It is undisputed that plaintiff's injury was categorized as permanent with a high likelihood of recurrence. However, as the trial court noted, the duration of plaintiff's symptoms was not continuous and will not be continuous. Plaintiff's psychiatrist indicated that plaintiff's symptoms had subsided within a year to two years from the accident and that their return would be predicated on "triggering effects." When those triggering effects occurred, plaintiff did suffer from apparent PTSD symptoms, such as at the anniversary of the homecoming dance and the deaths of the two boys who went to her school. But it is apparent that the duration of plaintiff's more serious symptoms was temporary.

The fourth factor, which looks to the extent of residual impairments, also supports defendants. The *Kreiner* Court stated that "self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish" a residual impairment. *Id.* at 133 n 17. Plaintiff has not had physician-imposed restrictions placed upon her; rather, changes in her social life were self-imposed due to her perceived mental pain.

In fairness, the prognosis for eventual recovery does tend to support plaintiff. As noted, her psychiatrist testified that her condition was permanent, and there was no testimony or evidence offered to the contrary by defendant. However, no factor is dispositive in this inquiry, and the fact that plaintiff's injury is permanent does not necessarily indicate a showing of injury so serious that it affects plaintiff's general ability to conduct the course of her life.

While the five factors discussed above are not exhaustive, they favor a conclusion that plaintiff's general ability to lead her normal life is not affected by her PTSD condition. Further, in determining whether plaintiff's general ability to lead her own life is affected, one should

⁴ Although plaintiff was prescribed medication, she testified that she did not continue to take it because she did not feel that it helped.

consider her “functional abilities and activities.” *Kreiner, supra* at 135. After identifying those activities, it is necessary to determine “how long and how pervasively [those] activities and abilities were affected.” *Id.*

Mr. Straub, a plaintiff in *Kreiner*, admittedly suffered some serious injuries, including a broken bone in the middle finger, injured tendons in his hand, and a quarter-sized wound on his palm. *Kreiner, supra* at 134. Nonetheless, the extent of his injuries did not change his post-accident life enough to affect his general ability to lead his normal life. *Id.* at 136. Here, plaintiff’s trauma, including her PTSD symptoms that existed for a considerable amount of time after the accident, may be serious. However, the trial court reasonably determined that her PTSD did not change her post-accident life enough to affect her general ability to lead her normal life. After her accident plaintiff did suffer a temporary drop in grades, social activities, and interpersonal relationships. Since then, however, plaintiff acquired and maintained a job, was accepted to college, had a long-term boyfriend, and went on family outings. Case law provides that even diminished activities do not necessarily satisfy the statutory prerequisites. *Id.* at 137. In the present case, plaintiff’s life was definitely disrupted as a result of her accident. She no longer played basketball, had diminished studying abilities for a period of about two years, and narrowed the circle of people with whom she interacted. Nonetheless, she was still able to attend school, improve her academic performance, and planned to attend college. As such, the trial court did not clearly err in finding that plaintiff’s impairment did not affect her general ability to lead her normal life and, thus, did not constitute a serious impairment of body function.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto