

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

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DEBRA WEIDER,

Plaintiff-Appellee,

v

CHERYL LYNN MITCHELL,

Defendant-Appellant.

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UNPUBLISHED

July 13, 2006

No. 265886

Wayne Circuit Court

LC No. 04-435915-NI

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court order denying defendant's motion for summary disposition. We vacate the order and remand this case for further proceedings consistent with this opinion. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained injuries to her back when defendant sideswiped plaintiff as she stepped out of a cloud of steam from a steam grate on a street in downtown Detroit. Plaintiff was taken to a hospital and treated for abrasions, contusions, and pain on her left side. The x-rays of plaintiff's cervical, thoracic, and lumbar spine showed arthritic degeneration but otherwise appeared normal. A comparison of pre- and post-accident MRIs revealed no significant disc herniation. Plaintiff was off work for over four months, during which she received eighteen physical therapy sessions. Plaintiff's final physical therapy report stated that plaintiff "feels that she has got 95% of her life back" and that plaintiff does not take pain medication, even though she experiences "discomfort 20% of the time." The physical therapy report also reflected some limitation in plaintiff's trunk flexion, extension, and right side bending, which was "approximately  $\frac{3}{4}$  into available ROM [range of motion], without pain." The physical therapist's assessment of plaintiff stated:

The patient has demonstrated improvements in her trunk mobility, lower extremity strength, pain reduction and overall lower extremity flexibility. She has attained all of her long-term goals and is very motivated to continue on with her strengthening program.

The physical therapist imposed no physical limitations and required no continued physical therapy, other than home exercise. Plaintiff claims that her physicians imposed lifting restrictions of twenty-five to thirty pounds after the accident occurred but is unsure if the

restrictions were lifted. However, plaintiff has not identified any documentation signed by a physician restricting her activities. In plaintiff's deposition testimony, she claimed that her injury precludes her from numerous sports, gardening, and cleaning activities that require bending, lifting, and reaching. After plaintiff returned to work, she resigned within six weeks to take another position that paid slightly less but had shorter hours and required less physical exertion.

Plaintiff sued defendant for noneconomic damages, alleging that that she suffered a serious impairment of a body function. Defendant moved for summary disposition under MCR 2.116(C)(10), claiming that there was no genuine issue of material fact that plaintiff suffered a serious impairment of a body function. Defendant primarily argued that plaintiff's alleged impairment did not affect her general ability to lead her normal life and that plaintiff's limitations were self-imposed. The trial court denied defendant's motion on the record at the hearing on defendant's motion, stating:

Yeah, you know, I think that the *Kreiner* test is met here. I think there's an objectively manifested injury and there's – I think she treated for quite some time and there were some considerable limitations in the range of motion. So I'm going to deny the motion for summary disposition.

Defendant appeals by leave granted, arguing that plaintiff's limitations were self-imposed and, therefore, cannot constitute a serious impairment of a body function and that plaintiff's injury did not affect her general ability to lead her normal life.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Burchell*, *supra* at 479. We “review the record evidence and all reasonable inferences drawn from it and decide whether a genuine issue regarding any material fact exists to warrant a trial.” *Id.* at 479-480.

Under the No-Fault Act, a person may be subject to liability for the noneconomic loss of an injured person caused by the ownership, maintenance, or use of a motor vehicle if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. MCL 500.3135(1). “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.” MCL 500.3135(7). The impaired body function must be an “important” body function. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). An impairment of an unimportant body function is not sufficient to establish a serious impairment. *Id.* Also, a mere injury of an important body function is also insufficient if the injury does not manifest as a serious impairment. *Id.* If an injured person is “generally” able to lead his or her normal life, then the injury has not manifested itself as a serious impairment. *Id.* at 133.

In determining whether an impairment of an important body function affects the injured person's general ability to lead his or her normal life, a court must compare the plaintiff's life before and after the injury as well as the significance of any affected aspects on the course of the plaintiff's overall life. *Id.* The factors that a court considers are “(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.* A plaintiff’s self-imposed restrictions based on pain do not establish a residual impairment constituting a serious impairment of a body function. *Id.* at 133 n 17; see also *McDaniels v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005). However, a self-imposed restriction based on other than pain, or a restriction imposed by a physician, may establish an impairment. *McDaniels*, 268 Mich App at 282-283.

In this case, it does not appear that plaintiff has shown that a physician imposed the pain-based restrictions that she alleges. At most, she has presented the report of the physical therapist that plaintiff had twenty-five percent limitations of trunk flexion, extension, and right-side bending. However, the physical therapist did not impose any restrictions on plaintiff. In the absence of any limitations imposed by a physician or even a physical therapist, it does not appear that plaintiff has shown that her limitations are other than self-imposed.

Further, contrary to the trial court’s conclusion, the court did not fully apply the *Kreiner* test. The trial court only found that plaintiff submitted evidence of an objective manifestation of an injury and that “she treated for quite some time” and had “considerable limitation in the range of motion.” However, the trial court did not consider whether the evidence supported plaintiff’s claim that the injury affected her general ability to lead her normal life. Moreover, the trial court did not comment on the apparent absence of any physician-imposed restriction on plaintiff’s activities.

Accordingly, we vacate the trial court’s order denying defendant’s motion for summary disposition and remand for further proceedings to determine whether plaintiff made a sufficient showing under *Kreiner* and *McDaniels* that her limitations were not simply self-imposed and that they affected her general ability to lead her normal pre-accident life.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey  
/s/ Patrick M. Meter