

STATE OF MICHIGAN  
COURT OF APPEALS

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HAZEL STAFFORD and GENE STAFFORD,

Plaintiffs-Appellants,

v

LINDSAY RAYE LOWMAN,

Defendant-Appellee.

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UNPUBLISHED

July 18, 2006

No. 259170

Wayne Circuit Court

LC No. 03-322781-NI

Before: Jansen, P.J., and Murphy and Hood, JJ.

PER CURIAM.

Plaintiffs Hazel and Gene Stafford<sup>1</sup> appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The trial court did not affirmatively state the rule on which it relied in granting defendant's motion. However, because it is evident that the trial court looked beyond the pleadings in making its determination, we consider the motion as having been granted under MCR 2.116(C)(10). *DeHart v Joe Lunghamer Chevrolet, Inc*, 239 Mich App 181, 184; 607 NW2d 417 (1999).

A motion under MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). The trial court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

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<sup>1</sup> Because Gene Stafford's loss of consortium claim is derivative of Hazel Stafford's claims, we use the singular form "plaintiff" throughout this opinion.

Under the no-fault act, a plaintiff can recover noneconomic damages arising from a motor vehicle accident only if he or she has “suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). Plaintiff claims that she has suffered a serious impairment of body function, which is defined 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). Whether a plaintiff has suffered a serious impairment of body function is a question of law to be decided by the court, unless there is a factual dispute concerning the nature and extent of the person’s injuries that is material to determining whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a).

In *Kreiner v Fischer*, 471 Mich 109, 131; 683 NW2d 611 (2004), our Supreme Court established a four-step process “to provide the lower courts with a basic framework for separating out those plaintiffs who meet the statutory threshold from those who do not.” A court must first determine whether there is a factual dispute concerning the nature and extent of the plaintiff’s injuries. *Id.* at 131-132. Second, if there is no factual dispute, a court may decide as a matter of law whether the plaintiff has suffered a serious impairment of a body function. MCL 500.3135(2)(a); *Kreiner, supra* at 132. Third, if a court finds that an important body function has been impaired, it must then determine whether the impairment has been objectively manifested. *Id.* Finally, if a court is able to find that an important body function has been impaired, and that the impairment is objectively manifested, it then must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life. *Id.* at 132-133. Here, defendant argues that plaintiff’s injuries are not “objectively manifested” and did not affect plaintiff’s “general ability to lead her normal life.”

### I. Objective Manifestation of Injury

Plaintiff argues that the trial court erred by ruling that she failed to set forth evidence of an objective manifestation of her injuries. We agree in part.

Subjective complaints unsupported by medical documentation are not sufficient to prove that the important body function has been impaired. *Kreiner, supra* at 132. Instead, for an impairment to be objectively manifested, there must be a medically identifiable injury or condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). In the present case, plaintiff contends that she suffered injuries to her left shoulder, left thorax, left chest, and rib cage when she was involved in an August 2000 motor vehicle accident. Plaintiff argues that an MRI, taken several months following the accident, is sufficient to satisfy the objective manifestation requirement. The MRI showed an “accentuation of cervical lordosis and thoracic kyphosis.”<sup>2</sup> The MRI also showed “mild spondylotic changes of the cervical spine, including right-sided disc bulging at the C4-C5 and C5-C6 levels with associated foraminal narrowing.” Some of plaintiff’s physicians diagnosed these injuries as “secondary” to the August 2000 accident.

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<sup>2</sup> Lordosis and kyphosis are terms that refer to the natural curvature of the spine. We see no practical difference between lordosis and kyphosis for purposes of the analysis in this case.

This Court has held that x-ray results showing a loss of cervical lordosis or spinal curvature constitute objective manifestations of injury.<sup>3</sup> See *Chumley v Chrysler Corp*, 156 Mich App 474, 481; 401 NW2d 879 (1986); *Shaw v Martin*, 155 Mich App 89, 97; 399 NW2d 450 (1986); *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984). Similarly, because the MRI in the instant case showed an accentuation of plaintiff's cervical lordosis and thoracic kyphosis, these conditions were objectively manifested. *Chumley, supra*; *Shaw, supra*; *Sherrell, supra*.

It is true that an MRI taken of plaintiff's spine on the date of the accident showed only "minor degenerative changes." Further, x-rays taken in September 2000 showed "tenderness in the left rib cage area," but "there was no visible trauma" and plaintiff had a full range of motion. Additional x-rays of plaintiff's spine, chest, and ribs taken that same day showed only degenerative changes in plaintiff's condition. Finally, a March 2001 report revealed that an x-ray of plaintiff's ribs showed no change in condition.

However, as noted, the MRI taken in March 2001 showed "accentuation of cervical lordosis and thoracic kyphosis." Moreover, the MRI also showed "right-sided disc bulging at the C4-C5 and C5-C6 levels with associated foraminal narrowing." Thus, the MRI indicated apparent abnormalities in plaintiff's cervical and thoracic spine, and was sufficient to satisfy the objective-manifestation requirement with respect to these injuries. *Chumley, supra* at 481; *Shaw, supra* at 96-97; *Sherrell, supra* at 711.

In contrast, plaintiff has failed to establish an objective manifestation of the purported injuries to her shoulder, chest, and rib cage. Although Dr. Ronald Kraynek diagnosed plaintiff as having suffered a "traumatic C-T-L sprain with associated Cephaligin [sic], Intercostal neuralgia, costal conthritis, soft tissue contusion to the right breast resulting in breast cancer and chronic pain," plaintiff has failed to provide any evidence that satisfies the objective manifestation requirement with respect to these diagnoses. Accordingly, plaintiff has failed to satisfy the objective manifestation requirement with regard to her alleged shoulder, chest, and rib cage injuries.

Defendant's argument that subsequent medical records impeach or supercede the March 2001 MRI is without merit. As noted by the trial court, medical records dated almost one year later indicate that one of plaintiff's physicians "scheduled her for a bone scan and a thoracic MRI to rule out underlying mets [sic] and to identify the etiology of her spine pain." Although this arguably calls into question the accuracy of the March 2001 MRI, the trial court was required to

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<sup>3</sup> We note that in *Guerrero v Schoolmeester*, 135 Mich App 742, 750-751; 356 NW2d 251 (1984), overruled in part on other grounds, *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986), this Court held that the plaintiff's loss of cervical lordosis was not objectively manifested. However, the finding in that case was predicated on the fact that there was no objectively established cause of the plaintiff's loss of lordosis. *Id.* at 750. In contrast, the instant case involves a loss of lordosis that was objectively manifested by an MRI following plaintiff's motor vehicle accident. Therefore, the reasoning of *Guerrero* is inapplicable to the case at bar.

consider this evidence in the light most favorable to plaintiff. *Maiden, supra* at 120. The court erred by viewing the competing evidence in defendant's favor.

In sum, although plaintiff has failed to establish an objective manifestation of her alleged shoulder, chest, and rib injuries, she has sufficiently shown the existence of objectively manifested injuries to her cervical and thoracic spine.

## II. Plaintiff's General Ability to Lead Her Normal Life

Plaintiff also argues that the trial court erred in determining that her injuries did not affect her general ability to lead her normal life. We disagree.

In *Kreiner, supra* at 131, our Supreme Court explained that a plaintiff must demonstrate that her injury has altered the "course or trajectory" of his or her life in order to meet the serious impairment threshold. A negative effect on a particular aspect of a person's life is insufficient if the plaintiff is, for the most part, able to live his or her normal life. *Id.* at 130-131. In evaluating a plaintiff's claim, the court should identify "how [the plaintiff's] life has been affected, by how much, and for how long." *Id.* at 131. Doing so requires the court to "engage in a multifaceted inquiry, comparing the 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." *Id.* at 132-133.

*Kreiner* set forth a list of objective factors relevant to whether a plaintiff's "general ability" to lead his or her normal life has been affected:

- (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.* at 133 (footnotes omitted).]

The list is not exhaustive, and no single factor is meant to be dispositive. *Id.* Rather, a court must consider the "totality of the circumstances" to determine whether the impairment affects the plaintiff's general ability to lead her normal life. *Id.* at 133-134. When the extent of a residual impairment is at issue, self-imposed restrictions based solely on pain, as opposed to physician-imposed restrictions, are insufficient to establish this point. *Id.* at 133 n 17.

Applying *Kreiner*, we conclude that plaintiff has failed to show that her injuries or residual impairments have affected her general ability to lead her normal life. Before the accident, plaintiff was a retired, 71-year old woman. Plaintiff testified that as a result of the accident, she could no longer travel, perform housework, garden, exercise, ride her bike, drive a vehicle, or engage in intimate activities with her husband. According to plaintiff, she did not have any pain in her neck or back before the accident. After the accident, however, she experienced headaches and had pain in her neck, left shoulder, left side, and ribs.

As stated, the only objectively manifested injuries were plaintiff's cervical lordosis, thoracic kyphosis, and bulging discs. Although plaintiff sought chiropractic treatment following the accident from Dr. Kraynek, that treatment was for a neck and back strain and soft tissue injuries. Further, she had previously been treating with Dr. Kraynek for another back problem. Plaintiff otherwise had limited physical therapy following the accident. Three years following

the accident, Dr. Wallace C. Ross opined that plaintiff was no longer in need chiropractic care. Moreover, in March 2004, Dr. Z. J. Endress conducted a medical examination of plaintiff and opined that she had recovered from her injuries. Although plaintiff has been taking significant pain medications and has received epidural steroid injections for her neck and back pain, her treating physicians have begun to question her need for medication and pain treatment. Specifically, plaintiff's physicians advised that further action be taken to diagnose the cause of her pain. As a result, plaintiff's treatment was limited to monthly visits to the pain institute to receive medication refills, and steroid injections every three months to treat her subjective complaints. None of plaintiff's physicians have ordered additional treatment, and plaintiff's prognosis has now been stable for approximately two years.

Plaintiff's argument regarding residual impairments is unpersuasive. Plaintiff's restrictions are either self-imposed or relate to alleged injuries for which there is no objective manifestation. The only objectively manifested injuries are the "accentuation of cervical lordosis and thoracic kyphosis," and the bulging discs. Although Dr. Kraynek has restricted plaintiff's activities, essentially confining plaintiff to her home, the restrictions relate to injuries *other than* those manifested by the March 2001 MRI (i.e., a C-T-L sprain, headaches, nerve pain, soft tissue injuries, and breast cancer). No physician has limited plaintiff's activities as a result of her abnormal cervical lordosis, thoracic kyphosis or bulging discs. As already noted, self-imposed restrictions based solely on subjective pain, as opposed to physician-imposed restrictions, are insufficient to establish the extent of the residual impairment.<sup>4</sup> *Kriener, supra* at 133 n 17.

Based on the evidence presented in this case, the trial court did not err in ruling that plaintiff's injuries did not affect her general ability to lead her normal life. Thus, the trial court correctly concluded that plaintiff had not suffered a serious impairment of body function as defined by MCL 500.3135. The trial court properly granted defendant's motion for summary disposition. Because summary disposition was proper on this ground, we need not address defendant's alternative argument concerning causation.

Affirmed.

/s/ Kathleen Jansen  
/s/ William B. Murphy  
/s/ Karen M. Fort Hood

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<sup>4</sup> We note that plaintiff's alleged restrictions with regard to travel are overstated and unsupported by the record. The record shows that plaintiff has been able to travel numerous times since her August 2000 accident.