

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHELLE A. SZEPANSKI,

Plaintiff-Appellant,

v

VANESSA J. BRADFORD,

Defendant-Appellee.

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UNPUBLISHED

October 5, 2006

No. 269410

Wayne Circuit Court

LC No. 04-425794-NI

Before: White, P.J., and Zahra and Kelly, 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 defendant's 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 a serious impairment of body function. 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 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 determining whether the course of a person's normal life has been affected, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Id.*, pp 132-133. Even where there are minor changes in how the person performs an activity, a person may

generally be able to continue performing that activity. *Id.*, p 131. The court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Id.*, p 133. Residual impairment is not established by self-imposed restrictions. *Id.*, p 133 n 17; *McDaniel v Hemker*, 268 Mich App 269; 707 NW2d 211 (2005).

Plaintiff attended three rounds of physical therapy for injuries to her knees and back. She tried prescription medication, but found that nonprescription medication was more effective. She continued her employment, although she took off some hours to accommodate her therapy appointments and occasionally missed work because of pain. She identified some changes in recreational activities, but did not indicate that these activities were particularly important to her before the accident. Cf. *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005); *Kreiner, supra*, p 134 n 19. More importantly, her decision to refrain from those recreational activities is not sufficient to establish residual impairment. “Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish [residual impairment].” *Kreiner, supra*, p 133 n 17; *McDaniel, supra*, p 283. 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. *Id.* See *Williams, supra*, p 509 (indicating that this Court may consider changes in activities that are consistent with a physician’s observation of limited movement). However, plaintiff did not offer evidence linking her decision not to engage in camping, canoeing, and cross-country skiing 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 other than lifting. She did not 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 establish residual impairment.

We recognize that residual impairment is not essential to establishing a threshold injury. In fact, “an impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff’s life is extensive.” *Williams, supra*, p 508. However, plaintiff did not show an impairment of a short duration that had an extensive effect on her life.

Essentially, plaintiff’s claim focuses on her ongoing back pain. However, the plaintiff in *Kreiner, supra*, p 109, reported continuous pain in his lower back and right leg nearly two years after the accident and had to limit his workday. The plaintiff’s injuries were inadequate to meet the threshold in *Kreiner*. Likewise, plaintiff’s injuries in the present case do not meet the threshold.

The trial court correctly determined that plaintiff did not show that the injury affected her general ability to lead her normal life.

Affirmed.

/s/ Helene N. White  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly