

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

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MONICA URBAN,

Plaintiff-Appellee,

v

MICHAEL EVAN JACOBSON,

Defendant-Appellant,

and

LONNIE LANE, JR.,

Defendant.

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UNPUBLISHED

October 24, 2006

No. 261797

Livingston Circuit Court

LC No. 01-018962-NI

Before: Fitzgerald, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered upon a jury's award of \$7,500 to plaintiff in this case brought under the no-fault insurance act, MCL 500.3101 *et seq.* We affirm.

This case was previously before this Court in docket nos. 244056 and 258157. In docket no. 244056, this Court reversed the trial court's grant of summary disposition in favor of defendant and remanded for the court to "make findings concerning whether a factual dispute exists with respect to whether plaintiff suffered a 'serious impairment of body function, considering "the nature and extent" of plaintiff's injuries consistent with [MCL 500.3135(2)(a)(i) or (ii)]."'<sup>1</sup>

On September 9, 2004, the trial court denied defendant's motion for summary disposition and granted plaintiff's motion for partial summary disposition motion pursuant to MCR 2.116(C)(10) on the issue of whether plaintiff's ability to lead her normal life had been adversely

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<sup>1</sup> *Urban v Jacobson*, unpublished opinion per curiam of the Court of Appeals, issued January 15, 2004 (Docket No. 244056), slip op p 2 (citations omitted).

affected by the automobile accident in issue. MCL 500.3135(7).<sup>2</sup> Defendant's issues on appeal involve only the trial court's September 9, 2004, order.

Under Michigan's no-fault insurance act, "[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). "[S]erious impairment of body function" 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). A "serious impairment of body function" must "affect[ ] the person's general ability to lead his or her normal life." MCL 500.3135(7). *Kreiner v Fischer*, 471 Mich 109, 131, 683 NW2d 611 (2004). "[W]hether a person has suffered a serious impairment of body function is a question of law for the trial court to decide where the court finds that there is no factual dispute concerning the nature and extent of the person's injuries or where 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." *McDaniels v Hemker*, 268 Mich App. 269, 273- 274, 707 N.W.2d 211 (2005).

The prior panel determined that "plaintiff has presented evidence to establish an objective manifestation of an injury (MRI) to an important body function (neck and back)." *Urban, supra*, slip op p 1. The issue in this appeal is whether the trial court properly determined that plaintiff's injury has affected her general ability to lead her normal life.

The starting point in analyzing whether an impairment affects a person's "general," i.e., overall, ability to lead his normal life should be identifying how his life has been affected, by how much, and for how long. Specific activities should be examined with an understanding that not all activities have the same significance in a person's overall life. Also, minor changes in how a person performs a specific activity may not change the fact that the person may still "generally" be able to perform that activity. Thus, in determining whether an injury affects a person's general ability to lead his or her normal life, courts must examine the person's life before and after the accident and determine whether any difference between the person's pre- and post-accident lifestyle has affected the person's "general ability" to "conduct the course of his life." *Id.* at 132-133. A mere "de minimus" effect is insufficient because such an effect would not affect a person's "general ability" to lead his or her life. *Id.* at 133. And self-imposed restrictions, as opposed to physician-imposed restrictions, are insufficient to establish the extent of any residual impairment. *Id.* at 133 n 17.

Plaintiff was able to return to work a couple days after the accident. She worked the same 30-hour a week schedule for three months following the accident that she had worked before the accident, until she reduced her time to 16 to 20 hours a week. Nonetheless, even while plaintiff was working a reduced schedule at her retail position, she was working

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<sup>2</sup> In docket no. 258157, defendant's application for leave to appeal from this order was denied. *Urban v Jacobson*, unpublished order of the Court of Appeals, entered October 29, 2004 (Docket No. 258157).

concurrently as a secretarial substitute for Howell Parks and Recreation, where she eventually took another part time position at 30 hours a week. Additionally, when asked about activities which are not work-related that have been adversely affected by her injury immediately following the accident, plaintiff answered, “I don’t ride roller coasters, I don’t play badminton, I don’t paint like I used to, I don’t sew like I used to.” The loss and/or diminishment of these activities are not a significant alteration in the course of her life.

However, plaintiff averred that while she can still do many of the activities she did prior to the accident (e.g., “driving, walking, working, cleaning, shopping”), she also indicated that she does them with less frequency and that “[o]n several occasions, [she has] . . . been incapacitated for several days after engaging in the . . . activities due to pain and inflammation.” Plaintiff also averred that she is “unable to lift heavy objects, . . . cannot work in the yard, . . . cannot exercise, . . . cannot drive extended distances (more than 30 miles), . . . cannot sit for extended periods of time, and . . . cannot walk for extended periods/lengths.” These restrictions are a significant alteration in her lifestyle. And plaintiff’s assertion that she is often incapacitated after such activities indicates more than a self-imposed restriction. Moreover, the duration of plaintiff’s disability is a factor that weighs in favor of finding that her pre-accident life has been significantly altered. Plaintiff is not expected to heal from her injuries, nor is she expected to have any long-term relief from them unless she has corrective surgery. See *Straub v Collette*, 471 Mich 109, 135; 683 NW2d 611 (2004). Under these circumstances, we conclude that the trial court did not err in granting partial summary disposition to plaintiff. See *McDaniel v Hemker*, 268 Mich App 269; 707 NW2d 211 (2005).

We also reject defendant’s argument that the trial court exceeded the scope of this Court’s order of remand. Contrary to defendant’s suggestion, this Court did not remand this case in January 2004 for the trial court to make findings of fact in support of its order granting summary disposition in favor of defendant. Rather, this Court reversed the trial court’s order granting summary disposition, holding that the trial court could not have determined whether plaintiff suffered a serious impairment of body function as a matter of law without first making the statutorily required factual findings. Hence, if the trial court was persuaded that further discovery was necessary for it to make the requisite findings of fact, nothing in this Court’s opinion remanding for further proceedings precluded the court from reopening discovery or hearing plaintiff’s motion for summary disposition.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey