

STATE OF MICHIGAN
COURT OF APPEALS

TIFFANY FAWN COLLINS,

Plaintiff-Appellant,

V

JORDAN RAUM LAMERS and DEBRA ANNE
LAMERS,

Defendants-Appellees.

UNPUBLISHED

October 24, 2006

No. 268794

Kent Circuit Court

LC No. 04-012473-NI

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition to defendants under MCR 2.116(C)(10). Plaintiff filed a tort liability claim for injuries suffered following an automobile accident caused by defendant, Jordan Raum Lamers, while driving his mother, Debra Anne Lamer's, car with her permission. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues on appeal that the trial court erred by holding that she had not suffered a serious impairment of body function. We disagree. A motion for summary disposition made under MCR 2.116(C)(10) is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where 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. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).]

There is a genuine issue of material fact when reasonable minds could differ upon an issue after viewing the record in the light most favorable to the nonmoving party. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Under the no-fault act, MCL 500.3135(1), an injured person's ability to sue a third party for noneconomic damages is limited to cases of "death, serious impairment of body function, or permanent serious disfigurement." *Jackson v Nelson*, 252 Mich App 643, 644; 654 NW2d 604 (2002). In this case, plaintiff alleges that her injuries constitute a serious impairment of body function. "Serious impairment of body function" is statutorily 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." *Id.*, p 649; MCL 500.3135(7). "Objectively manifested" has been held to mean that the injury must be medically identifiable or have a physical basis. *Jackson, supra*, p 653. The injury must also be to an important body function. *Id.*

To meet the threshold to sue for noneconomic damages, a plaintiff's overall course of life must be affected by the accident-related injuries. A mere interruption of some aspects of the plaintiff's life is not enough. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). The first step in determining whether a plaintiff meets the threshold is deciding whether there is a factual dispute concerning the nature and extent of the plaintiff's injuries. *Id.*, pp 131-132. If there is no factual dispute, or if the factual dispute is not material to the determination whether the person has suffered a serious impairment of body function, then the court may decide the issue as a matter of law. *Id.*, p 132.

The second step is the determination of whether an important body function has been impaired. *Id.* If an important body function has been impaired, the court must determine whether it is objectively manifested. *Id.* "Subjective complaints that are not medically documented are insufficient." *Id.* Finally, the court must determine if the impairment affects the plaintiff's general ability to lead his or her normal life. *Kreiner, supra*, p 132.

In deciding whether the plaintiff's normal life has been altered, the court should compare the plaintiff's life before and after the accident and determine whether the injuries have actually affected the plaintiff's "general ability" to conduct the course of his life. *Id.*, pp 132-133. "[M]inor 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." *Id.*, p 131. Restrictions must be directed by a physician and cannot be self-imposed. *Id.*, p 134. *Kreiner* provided the following list of objective factors that are not exhaustive or dispositive: "(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.*, p 133.

In the present case, the trial court found there was some dispute concerning the nature of plaintiff's injuries, but the dispute was not material to whether she suffered a serious impairment of body function. Defendants conceded that an important body function was impaired for the purposes of the summary disposition motion only, and the trial court found that the injury did not affect plaintiff's general ability to conduct the course of her life because her only restrictions were self-imposed.

Plaintiff primarily complains of chronic pain in her lower back caused by the accident. Movement in the back has been held to be an important body function. *Kreiner, supra*, p 136; *Freel v Dehaan*, 155 Mich App 517, 520; 400 NW2d 316 (1986). However, plaintiff has not shown an objectively manifested impairment. All of her diagnostic examinations were normal. While plaintiff presented evidence that she had received radio-frequency ablation treatments from Srinivas Chiravuri, M.D., attending physician at the University of Michigan Health System,

and that those treatments lessened her pain, and that Dr. Chiravuri diagnosed her condition as lumbar facet arthropathy, Dr. Chiravuri's diagnosis and treatment of plaintiff were strongly criticized by Randolph B. Russo, M.D. For example, Dr. Russo stated that "no objective/organic abnormality has been identified as to the etiology of her pain complaints." He also specifically stated that he could not support the diagnosis of facet mediated pain or the use of multilevel radio-frequency ablation treatments as medically necessary, and that over-the-counter pain medications should suffice. Based on the medical evidence, we conclude that plaintiff does not have an objectively manifested impairment.

Finally, even assuming plaintiff has an objectively manifested impairment, she has maintained her general ability to lead her normal life. Her life has not substantially changed since the accident. Plaintiff is employed as a nurse technician. Plaintiff was off work for three weeks following the accident, worked part time for another three weeks, and then returned to full-time work. She is not on any physical restrictions at work, and her job duties were not changed as a result of the accident.

Plaintiff claims to have had an increase in weight from 120 pounds to 150 pounds since the accident. However, her weight was documented as 155 pounds only four days after the accident. Plaintiff went to the Bahamas in May 2004 with some friends. Plaintiff is married with children. Plaintiff asserts that her accident-related injuries limit some of her regular activities, such as bathing her children, doing laundry, mopping the floor, sex, going to the zoo, and horseback riding. However, she admitted that she still does these activities, but they cause her pain. Plaintiff also stated that she is very active with her children, and they "are constantly going somewhere or doing something." She has been a Girl Scout troop leader for two years.

Plaintiff argues that she has physician-imposed restrictions on lifting. However, in the letter she refers to, Dr. Chiravuri only advises her to "bend at her knees and keep her back straight" when lifting heavy objects. This recommendation from Dr. Chiravuri does not constitute a physical restriction. Therefore, summary disposition in favor of defendants was proper because plaintiff's injuries do not constitute a serious impairment of body function.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder