

STATE OF MICHIGAN
COURT OF APPEALS

LINDA K. POWELL,

Plaintiff-Appellant,

v

DANIEL J. BEAUDRY,

Defendant-Appellee.

UNPUBLISHED

October 24, 2006

No. 269123

Delta Circuit Court

LC No. 04-017708-NI

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

In this automobile negligence action brought under the no-fault act, MCL 500.3101 *et seq.*, plaintiff appeals as of right an order of the circuit court granting defendant's motion for summary disposition under MCR 2.116(C)(10). The court found, as a matter of law, that plaintiff did not suffer a serious impairment of body function, concluding that she failed to establish an impairment that affected her general ability to lead her normal life. We affirm.

The grant or denial of summary disposition is reviewed de novo by this Court to determine whether the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden, supra* at 118.

In order to recover noneconomic damages for tort liability arising from an automobile accident, an injured person must have suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). Serious 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).

In *Kreiner v Fischer*, 471 Mich 109, 133; 683 NW 2d 611 (2004), our Supreme Court set forth a nonexhaustive list of factors that can be used to help determine whether an impairment affects a plaintiff's general ability to lead his or her normal life. These factors 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.* *Kreiner* notes that the totality of the circumstances should be considered when making the determination of whether a plaintiff meets the no-fault threshold. *Id.* at 134. If the course or trajectory of a plaintiff's normal life has not been affected, it cannot be said that the plaintiff's general ability to lead his or her normal life has been affected. *Id.* at 131.

Further, the *Kreiner* Court instructed:

If a court finds 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. In determining whether the course of the plaintiff's normal life has been affected, a court should 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. Once this is identified, the court must engage in an objective analysis regarding whether any difference between the plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's "general ability" to conduct the course of his life. Merely "any effect" on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's "general ability" to lead his life. [*Id.* at 132-133 (emphasis in original).]

Here, the documentary evidence reflects that plaintiff's injuries have had a de minimus effect on her life and that the course or trajectory of her normal life has not been affected. She continues to operate her own tailor shop as she did before the accident, although it takes a little longer now to complete her seamstress tasks because her injuries have slowed her down. Plaintiff still does some dusting, folds laundry, and occasionally does the dishes. She is able to bathe and dress herself, and she can do her own hair and makeup. Plaintiff continues to cook her own meals as before the accident. She also continues to drive. Plaintiff is still capable of weeding her garden. While there was evidence indicating that plaintiff is somewhat restricted relative to performing some household chores, gardening, driving, and taking walks, the evidence does not suggest that these limitations, when viewed in comparison to plaintiff's life before the accident, are of such significance that it can be concluded that the course or trajectory of her life has been affected or altered, rather the effect has been de minimus.

Affirmed.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Michael R. Smolenski