

STATE OF MICHIGAN
COURT OF APPEALS

CARLA M. HAYWARD,

Plaintiff-Appellant,

v

DUANE E. COPLIN, COPLIN ACCOUNTING
SERVICE, DAVID B. RICH, and MICHIGAN
MECHANICAL INSULATION, INC.,

Defendants-Appellees,

and

MELISSA COPLIN,¹

Defendant.

UNPUBLISHED

October 31, 2006

No. 269928

Eaton Circuit Court

LC No. 05-001658-NI

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

In this no-fault action, plaintiff Carla Hayward appeals as of right from an order of the circuit court granting defendants Duane Coplin, Coplin Accounting Service, David Rich, and Michigan Mechanical Insulation, Inc., summary disposition under MCR 2.116(C)(10). The trial court concluded that the injuries Hayward allegedly suffered as the result of a September 2, 2004, automobile accident did not meet the no-fault threshold of serious impairment of body function because they did not affect her general ability to lead her normal life. We affirm.

I. Basic Facts And Procedural History

At approximately 8:45 a.m. on September 2, 2004, Hayward was driving westbound on St. Joe Highway in Eaton County when she stopped in the left-hand turn lane and waited to turn onto Arlington Drive. Rich stopped his vehicle behind Hayward. He did not have his vehicle's brake lights on. Coplin failed to notice that there were vehicles stopped ahead of him. His vehicle struck the rear end of Rich's vehicle, causing the front end of Rich's vehicle to strike the rear end of Hayward's vehicle. Hayward's vehicle was pushed slightly into the oncoming lane

¹ Hayward voluntarily dismissed Melissa Coplin without prejudice from the action below. Thus, she is not a party to this appeal.

of traffic, so she completed her turn and drove her vehicle onto a side street, where she parked it along a curb. According to Hayward, she then opened her car door and tried to exit the vehicle, but she froze up and could not do so. Paramedics came to her aid and placed a brace on her from her neck to her waist.

Hayward filed this negligence action against defendants alleging that she suffered injuries that constituted a serious impairment of body function. Specifically, Hayward claimed that she sustained the following injuries in the auto accident: disc herniations, radicular symptoms, left ulnar neuropathy, severe headaches, mental pain and anxiety, and psychological harm. However, during her deposition, Hayward stated that she did not have any injuries that resulted from the accident besides those to her neck.

Coplin and Coplin Accounting Services filed a motion for summary disposition, arguing that Hayward had not suffered a serious impairment of body function because she was unable to show that her injuries affected her general ability to lead her normal life. Defendants Rich and Michigan Mechanical Insulation, Inc. concurred in the motion.

At the motion hearing, the trial court first noted that Hayward had been previously injured in another auto accident, which had resulted in extensive injuries. Hayward was still receiving treatment for her injuries from this previous accident, and her allegedly new injuries, discomforts, and pains were the same types as the old ones. The trial court also noted that Hayward's medical condition was beginning to improve. In addition, the accident was only a minor one; Hayward's air bags never deployed, and her vehicle continued to be fully operable without repair. Finally, the trial court was unimpressed by the fact that Hayward was only away from work for two months and stated that "any restrictions were largely self-imposed." For these reasons, the trial court concluded that "[Hayward's] post-impairment life is not sufficiently different from her pre-impairment life to constitute a threshold issue" and that she "is still generally able to lead her normal life." Accordingly, the trial court granted summary disposition in defendants' favor.

II. *Kreiner* Analysis

A. Standard Of Review

We review de novo a trial court's ruling on a motion for summary disposition.² When evaluating a summary disposition motion brought under MCR 2.116(C)(10), we consider evidence submitted by the parties in the light most favorable to the opposing party.³ If the evidence does not establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law.⁴

² *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

³ *Id.* at 120.

⁴ *Id.*

B. Legal Standards

Under Michigan’s no-fault insurance act,⁵ “[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.”⁶ “[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.”⁷ The Michigan Supreme Court has made clear that minor or temporary impairments are insufficient to support a claim for noneconomic damages. “Although some aspects of a plaintiff’s entire normal life may be interrupted by the impairment, if, despite those impingements, *the course or trajectory* of the plaintiff’s normal life has not been affected, then the plaintiff’s ‘general ability’ to lead his [or her] normal life has not been affected[.]”⁸ To determine whether an injury has affected the course or trajectory of a plaintiff’s normal life, the court should compare “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.”⁹ “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 [or her] life.”¹⁰

The following objective factors are useful in determining whether a plaintiff’s injuries affect [his or] her general ability to lead a normal life: “(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.”¹¹ According to the Court, “[t]his list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves.”¹² But it is clear that “[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish” the extent of any residual impairment.¹³

C. Analysis

Here, we find that Hayward’s life after the accident is not significantly different than it was before and that any injuries she may have suffered have not affected her general ability to

⁵ MCL 500.3101 *et seq.*

⁶ MCL 500.3135(1) (emphasis added).

⁷ MCL 500.3135(7).

⁸ *Kreiner v Fischer*, 471 Mich 109, 131; 683 NW2d 611 (2004) (emphasis added).

⁹ *Id.* at 132-133.

¹⁰ *Id.* at 133.

¹¹ *Id.* at 133.

¹² *Id.* at 133-134.

¹³ *Id.* at 133 n 17.

lead her normal life. Hayward was unable to return to work for two months following the accident, but her doctor cleared her to work four hours a day for the next five months. Her doctor then cleared her to work six-hour days, which was only six hours a week less than she was working before the accident. By April 2005, an independent examiner cleared Hayward to work without restriction. Although Hayward's doctor restricted her from lifting at work, her job consists primarily of driving and does not require any heavy lifting. This restriction is, therefore, irrelevant because Hayward could still perform her job.

Hayward visited doctors on numerous occasions following the accident. However, this does not represent a significant change in her lifestyle. Although she denied that she was in a previous auto accident, her medical records show that she was treated in 1987 for injuries to her neck after she was a front-seat passenger in a car that was rear-ended by another vehicle. In 1998, Hayward filed a workers' compensation claim for injuries to her neck, head, arm, and leg due to work-related stress. From January 2002 until August 2004, Hayward visited her doctor approximately ten times and repeatedly complained of neck pain. Also, three days before her September 2004 auto accident, Hayward visited her doctor complaining of back pain after a pit bull knocked her down a stairway. It is clear that Hayward sought frequent medical treatment for similar complaints before the accident in question.

In addition, Hayward's medical condition seems to be improving. Hayward told a doctor during an independent examination in April 2005 that she thought she had improved 70 percent since the accident. This doctor opined that she would soon reach 80 to 90 percent improvement, did not need further treatment, and should return to work without restriction.

Finally, we are unpersuaded by Hayward's claims that she can no longer spend time with her husband, attend basketball games, go bowling, shop for clothes more than once each month, shop for food more than once or twice every two weeks, cook more than three times per week, or visit with her nieces and nephews because of her pain. In regard to these activities, Hayward's life now is not significantly different than before the accident. According to Hayward, she and her husband were separated off and on, and she had only lived with him for five out of the previous 17 months. Also, Hayward does not claim that she had shopped more frequently in the past. Moreover, the limitations on her activities are self-imposed. No doctor has ever restricted her from doing the things she did before, such as engaging in sexual intercourse, attending basketball games, bowling, shopping, or cooking.

For these reasons, we conclude that the trial court did not err in granting defendants' motion for summary disposition on the issue of whether Hayward's injuries generally affected her ability to lead her normal life.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette