

STATE OF MICHIGAN  
COURT OF APPEALS

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MEGAN A. KEAN,

Plaintiff-Appellant,

v

ANGELA L. CLARK,

Defendant-Appellee.

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UNPUBLISHED

March 8, 2007

No. 273691

Saginaw Circuit Court

LC No. 05-057775-NI

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), based on a finding that plaintiff had not suffered a serious impairment of body function or permanent serious disfigurement. Plaintiff challenges only the determination regarding serious impairment. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Following an automobile accident on September 21, 2003, plaintiff experienced neck and shoulder pain, and was prescribed a cervical collar, anti-inflammatory medication, and Tylenol for pain. Within three months, she was diagnosed as having left rotator cuff tendonitis with impingement and multidirectional instability. Plaintiff underwent successful arthroscopic surgery approximately nine months after the accident. By December 2004, she had for the most part recovered, and treatment was discontinued. During this time, plaintiff continued in school and, except for a six-week period after her surgery, continued working. She graduated from high school with honors and enrolled in college. At the time of her June 2006 deposition, she was working and attending college full-time. However, she indicated that her injuries left her unable to braid her hair or play on her high school fast pitch softball team. She did not play recreational softball during the summer of 2005 out of concern that she might re-injure her shoulder.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002).

In determining whether an impairment has affected a person's general ability to lead a normal life, a court should consider the totality of the circumstances, including but not limited to the nature and extent of the injury, the type and length of treatment required, the duration of the disability, the extent of residual impairment and the prognosis for eventual recovery. *Kreiner v Fischer*, 471 Mich 109, 133-134; 683 NW2d 611 (2004). In assessing the extent of the injury, a

court should compare the plaintiff's lifestyle before and after the injury. *Id.* at 132. An injury need not be permanent to be an impairment of an important body function, *id.* at 135, but if the person's general ability to lead his normal life has not been affected, he has not suffered a serious impairment. *Id.* at 130. The *Kreiner* Court stated:

. . . . Determining whether the impairment affects a plaintiff's "general ability" to lead his normal life requires considering whether the plaintiff is "generally able" to lead his normal life. If he is generally able to do so, then his general ability to lead his normal life has not been affected by the impairment.

. . . . [D]etermining whether a plaintiff is "generally able" to lead his normal life requires considering whether the plaintiff is, "for the most part" able to lead his normal life.

. . . [T]o "lead" one's normal life contemplates more than a minor interruption in life. To "lead" means, among other things, "to conduct or bring in a particular course." Given this meaning, the objectively manifested impairment of an important body function must affect the *course* of a person's life. Accordingly, the effect of the impairment on the course of a plaintiff's entire normal life must be considered. 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 normal life has not been affected and he does not meet the "serious impairment of body function" threshold.

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. [*Id.* at 130-131].

While the extent of residual "impairment cannot be proven by way of self-imposed restrictions based on real or perceived pain" and a plaintiff "cannot establish the extent of her residual impairment by merely claiming that she has restricted herself from engaging in activities or making certain movements because she experiences pain", "a self-imposed restriction *not* based on real or perceived pain can be considered. If a plaintiff restricts himself or herself from doing something because the plaintiff is physically incapable of doing so, but not because of pain, the restriction should be considered in determining the extent of any residual impairment." *McDaniels v Hemker*, 268 Mich App 269, 283; 707 NW2d 211 (2005).

The trial court did not err in granting defendant summary disposition. Even immediately after the accident, plaintiff was "for the most part" able to lead her normal life. She continued going to school and working. She was unable to play softball her senior year in high school, but no evidence showed that this was particularly significant to her overall life. Her continued inability to play softball appears to relate more to her fear of re-injury than to a restriction. The

only other identified restriction, braiding her hair, cannot be viewed as particularly significant. Thus, there is no evidence suggesting that she suffered a serious impairment of body function.

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette