

STATE OF MICHIGAN
COURT OF APPEALS

ALISHA ANN RECKER,

Plaintiff-Appellant,

v

CHARTER COMMUNICATIONS HOLDING
COMPANY, L.L.C., and MICHAEL ALAN
WARNES,

Defendants-Appellees.

UNPUBLISHED

May 12, 2009

No. 284676

Grand Traverse Circuit Court

LC No. 07-025927-NI

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This is an automobile no-fault, threshold injury case, controlled by *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). The trial court granted defendants' motion for summary disposition, concluding that plaintiff's injuries had not affected her general ability to lead her normal life, precluding suit under MCL 500.3135.

Plaintiff's right wrist was fractured in an accident that occurred on October 17, 2006. Plaintiff asserts that immediately after the accident she was unable to perform basic activities of daily living, could not drive because the only vehicle available to her had manual transmission, could not take notes during her college nursing classes, and could not work. Even now, plaintiff continues to experience reduced range of motion and strength in her right hand and wrist. She can no longer work as a waitress, which she had been doing before the accident. It continues to be difficult for her to feed, hold, and carry her child.

Plaintiff's physician's last report was dated December 21, 2006, nine weeks after the accident. The report stated that plaintiff was "getting along quite well" and had gotten "about 90%" of her extension back. The doctor concluded, "I'll allow her to continue doing anything she wants to do. She is back to work full duty. I am just going to follow her here on a p.r.n. basis. I encouraged her to get the motion back and the strength back. I will see her back if she needs anything." In her deposition, plaintiff stated she had pain when opening heavy doors,

lifting heavy objects, writing in school, and driving a vehicle with a manual transmission, and that she no longer did yoga or rode her dirt bike because of the pain. However, she also stated that there was no impact on the completion date of her studies, and that her inability to lift heavy things had not affected her employment at a consignment shop.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner, supra* at 129. Within the no-fault act, MCL 500.3135(1) provides:

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(7) defines “serious impairment of body function” as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” In *Kreiner, supra* at 130, our Supreme Court explained:

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.

The *Kreiner* Court continued:

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. [*Id.* at 131.]

A “serious” effect is not required, but there must be more than just “any” effect. *Id.* at 131 n 14. Courts may consider the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, the prognosis for eventual recovery, or other objective factors. *Id.* at 133. However, the *Kreiner* Court warned, “Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish [residual impairment].” *Id.* at 133 n 17. The inquiry is fact-specific, requiring not just an examination of the impairment but on how it affects the normal life of the injured person. *Id.* at 134 n 19.

The trial court did not err in concluding that plaintiff did not suffer a serious impairment of body function. The court’s rationale was as follows:

The injuries that this woman suffered were in all honestly [sic] not very significant. She had a broken wrist, it was treated by her doctor and within a few days by an orthopedic surgeon. She spent something like seven weeks in casts of various kinds, and her recovery was apparently prompt and unremarkable. Her

own doctor released her two months after the accident, released her to work with, to what he called, work full duty. There is no indication other than some self-reporting, which in the *Kreiner* case they indicate is not sufficient to indicate any residual serious residual [sic] effects.

The medical reports indicate that the doctor was not only permitting plaintiff to use her hand and wrist, but was encouraging her to do exercises so that she would recover her range of motion and strength. The comments on the medical reports indicate she healed well and rapidly, and there is no indication of any permanent injury.¹ Indeed, within two months of the accident, plaintiff's doctor had returned her to work and allowed her to do whatever she wanted. This is quite similar to the situation found insufficient by the *Kreiner* Court:

Straub's treatment consisted of having his wounds sutured, wearing a cast, and taking antibiotics and pain medication. Four days after the accident, outpatient surgery was performed on the fingers and palm. The treatment was not significant or long-term. Within two months, the fracture and surgical wounds had healed. . . . Plaintiff estimated he was ninety-nine percent back to normal by mid-January, 2000 [injury occurred in September 1999]. Given that Straub's injury was not extensive, recuperation was short, unremarkable, and virtually complete, and the effect of the injury on body function was not pervasive, we conclude that Straub's general ability to live his normal life was not affected. [*Kreiner, supra* at 135-136.]

The only limitations plaintiff is experiencing are self-imposed, and are due to pain and strength limits, which the medical reports imply simply require some time and exercises to overcome. The trial court correctly granted defendants' motion for summary disposition.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens

¹ Because the plaintiff in *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005), suffered a permanent limitation in his right shoulder's range of motion, that decision does not control this case. There is no evidence of permanent injury and no physician imposed restrictions on plaintiff's activities.