

STATE OF MICHIGAN  
COURT OF APPEALS

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ANGELA PATREKA,

Plaintiff-Appellant,

v

BRANDI LEIGH CORDLE and UNITED  
HEALTHCARE INSURANCE COMPANY,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

May 28, 2009

No. 284216

Monroe Circuit Court

LC No. 05-020296-CK

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action to recover noneconomic damages under the no-fault act arising from a collision with an uninsured motor vehicle, plaintiff appeals as of right, challenging the trial court's order granting defendant State Farm's motion for summary disposition under MCR 2.116(C)(10). The trial court determined that plaintiff had not established the threshold for establishing a serious impairment of body function, MCL 500.3135(7), because there was no genuine issue of material fact that her injuries affected her general ability to lead her normal life. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The moving party must identify the "issues as to which [it] believes there is no genuine issue as to any material fact," MCR 2.116(G)(4), and has the initial burden of supporting its position with affidavits, depositions, admissions, or other documentary evidence, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Once that burden is met, the burden shifts to the opposing party to show that a genuine issue of material fact exists. *Id.*

Contrary to plaintiff's argument, the trial court did not improperly decide a factual issue in favor of defendant when it granted defendant's motion for summary disposition. The

determination whether a person suffered a serious impairment of body function is a question of law for the court to decide where there is no factual dispute concerning the nature and extent of the injuries or where the dispute concerning the nature and extent of the injuries is not material to the determination. *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004); *McDaniels v Hemker*, 268 Mich App 269, 273-274; 707 NW2d 211 (2005).

Defendant met its initial burden of presenting evidence that plaintiff's injuries did not affect her general ability to lead her normal life. MCL 500.3135(7). Plaintiff was working, attending online classes, and was able to take care of her own personal hygiene. In support of her argument that her general ability to lead her normal life had been affected, plaintiff asserted that she did not work from the day of the accident, February 8, 2003, until April 2005. However, while "physician imposed restrictions, based on real or perceived pain, can establish the extent of a residual impairment," self-imposed restrictions, even if based on real or perceived pain, do not. *McDaniels, supra*, pp 282-283.

With respect to whether her lack of work activity was attributable to a physician-imposed restriction, plaintiff presented medical records concerning a visit to Dr. Macy on June 9, 2004, which stated, "I have given the patient a note that she continues to be unable to work," and a visit on February 15, 2005, that contain a similar notation. Records from Dr. Macy were also submitted with defendant's motion. A notation for a March 1, 2004, visit states, "I have continued to keep the patient off work." The notation from an April 14, 2005, visit states, "I have given her a note that she is unable to work."

The trial court analyzed this evidence as follows:

Plaintiff has provided documentary evidence (Exhibit E) where Dr. Judy Macy provides a note stating that Plaintiff is unable to work. However, I find no evidence where a physician orders or directs Plaintiff not to work. It is unclear from Exhibit E whether Plaintiff is requesting a note from the Doctor stating she is unable to work, or whether Dr. Macy is objectively suggesting that Plaintiff not return to work. Because of this, it would appear that Plaintiff's decision not to work for that period of time was self-inflicted, not doctor directed.

Factual questions concerning the "nature and extent" of a person's injuries must be submitted to a trier of fact if the dispute is material to the determination whether the person suffered a serious impairment of body function. *Kreiner, supra*, p 132. However, evaluation of the evidence to differentiate self-imposed restrictions from those that are physician-based is properly part of the analysis a court must conduct to determine whether a plaintiff has suffered a serious impairment of body function. See, e.g., p 133 n 17; *McDaniels, supra*, pp 284-285. The trial court essentially concluded that plaintiff had not met her burden of establishing a genuine issue of material fact with respect to whether the change in her work activity was based on a physician-imposed restriction. In the absence of such a showing by plaintiff, the court declined to treat plaintiff's lack of work as reflecting a physician-imposed restriction that could establish impairment. *Kreiner, supra*, p 133 n 17.

Even if the references to providing a note for plaintiff are treated as evidence of a physician-imposed restriction, we are not persuaded that a different conclusion is warranted. The earliest record of such a note is more than a year after the accident, and the references to the

notes do not indicate the periods to which the notes apply. In fact, plaintiff began working in April 2005, which is the same month as the last note. Although plaintiff also testified about changes in her recreational and domestic activities in her February 2006 deposition, she did not present any evidence that the changes were accompanied by ongoing physician-imposed restrictions. As previously indicated, self-imposed restrictions do not establish residual impairment. *McDaniels, supra*, p 282. The evidence of sporadic notes by a physician indicating that plaintiff was unable to work for undisclosed periods of time do not establish that plaintiff's general ability to lead her normal life was affected.

Plaintiff also argues that the trial court erred in considering reports and letters from defense medical examiners because they are inadmissible hearsay. However, those reports primarily addressed whether there were objective manifestations of an injury. The trial court resolved that issue in favor of plaintiff and instead granted summary disposition to defendant on the basis that plaintiff failed to show that her injuries affected her general ability to lead her normal life. Thus, there was no error.

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jane E. Markey