

STATE OF MICHIGAN  
COURT OF APPEALS

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CAROLINE RANSOM,

Plaintiff-Appellant,

v

UTILITY CONTRACTING COMPANY and  
DAVID GEORGE YULE,

Defendants-Appellees.

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UNPUBLISHED

April 22, 2008

No. 276827

Ingham Circuit Court

LC No. 06-000145-NI

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in defendants' favor. Because plaintiff has met the threshold injury requirement as defined in the Michigan no-fault act (MCL 500.3101 *et seq.*), we reverse.

This lawsuit arises out of an automobile accident that occurred between a vehicle owned and driven by plaintiff, and a dump truck owned by defendant Utility Contracting Co. and driven by its employee, defendant David George Yule. On August 2, 2004, plaintiff, a mail carrier, was delivering mail along her route when her vehicle was struck by the dump truck. Plaintiff filed a complaint against defendants alleging that defendant Yule's negligence caused the accident and that she suffered serious injuries, including a left shoulder rotator cuff tear requiring surgery, a right shoulder impingement, cervical disc bulges, and wrist neuropathy, as a result. Plaintiff also alleged that defendant Utility Contracting Company was liable for her injuries as the statutory owner of the dump truck and on respondeat superior principles. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10) contending that plaintiff failed to meet the threshold "serious impairment" requirement of the Michigan no-fault act to pursue non-economic damages. The trial court agreed, opining that plaintiff failed to establish that her injuries affected her general ability to lead her normal life and granting summary disposition in defendants' favor.

We review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). Summary disposition is appropriate under MCR 2.116(C)(10) if no genuine issue concerning any material fact exists and the moving party is entitled to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings,

and admissions in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999).

On appeal, plaintiff asserts that her injuries meet the no-fault threshold, such that summary disposition was inappropriate. We agree.

According to MCL 500.3135(1), 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. The issue of whether an injured person has suffered a serious impairment of body function may be a question of law for a court to decide or a question of fact for a jury to decide, depending on the circumstances. MCL 500.3135(2) explains, as follows:

- (a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:
  - (i) There is no factual dispute concerning the nature and extent of the person's injuries.
  - (ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function. . .

As used in MCL 500.3135, "serious impairment of body function" means 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). This definition can be broken down into three distinct requirements. First, there must be an objectively manifested injury. To be objectively manifested, an injury must be medically identifiable and have a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). Medically unsubstantiated pain is not an objectively manifested injury. *Kosack v Moore*, 144 Mich App 485, 488; 375 NW2d 742 (1985).

Second, the impairment must be of an important body function. Factors to be considered in determining whether an injury impairs an important body function include the extent of the injury, treatment required, duration of the disability, extent of residual impairment, and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 340-341; 612 NW2d 838 (2000).

Finally, the impairment must affect the person's ability to lead his or her normal life. According to *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), if a court determines that an injury constitutes an objectively manifested impairment of an important body function, then it must then determine whether the impairment affects the plaintiff's general ability to lead his or her normal life. *Id.* at 625-626. In doing so, the trial court must objectively compare the plaintiff's lifestyle and activities before the accident to his or her lifestyle and activities after the accident. *Id.* The *Kreiner* court suggested the following nonexhaustive list of factors which may be used by a court in its determination of the above: (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.* at 626.

To further clarify the appropriate analysis to be made by a trial court on this third element, the *Kreiner* court engaged in a lengthy discussion of the specific terms contained in the phrase “general ability to lead his/her normal life,” opining:

. . .to “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. [*Id.* at pages 624-625].

In the present matter, the parties essentially agree upon the nature and extent of plaintiff's injuries. Whether plaintiff suffered a serious impairment of body function, is, then, a question of law for the court. See, MCL 500.3135(2). The parties also raise no real dispute concerning whether plaintiff's injuries, are objectively manifested impairment(s) of important body function(s). The only issue for resolution on appeal, then, is whether plaintiff's injuries affect her general ability to lead her normal life.

According to the evidence provided by the parties, after the accident, plaintiff presented to the Chelsea Community Hospital with neck and back pain. X-rays taken on the date of the accident were unremarkable and plaintiff was discharged the same date with prescription pain medications and restricted to lifting no more than 2-3 pounds. Plaintiff continued to experience pain in her neck and her left shoulder and was ultimately diagnosed with neck and shoulder strain. MRI's of plaintiff's left shoulder were unremarkable and an MRI of her cervical spine showed disc bulging. Plaintiff underwent two separate courses of physical therapy for the pain and received steroid injections to relieve her neck pain. Plaintiff's pain continued and approximately two years after the accident, she underwent surgery for a partial left rotator cuff tear. Plaintiff underwent an additional course of physical therapy post-surgery.

At the time of the accident, plaintiff was employed as a post office mail carrier, working approximately 30 hours per week and also working part-time cleaning a health clinic. After the accident, plaintiff was restricted in lifting with her left shoulder and was physician-instructed not to drive. Plaintiff continued her employment at the post office but performed only light duty tasks, such as sorting mail, rather than delivering mail. Plaintiff testified at deposition (and produced documentary evidence in support) that she has been physician-restricted from working at the post office from the time of the August, 2006 surgery. Medical records indicate that plaintiff was still restricted from working at the post office until at least May of 2007. Plaintiff continued working at the health clinic after the surgery, but cannot perform tasks that she previously had, such as mopping, vacuuming and cleaning sinks, and now performs only light cleaning tasks such as emptying waste baskets and dusting.

Plaintiff testified that prior to the accident she enjoyed leisure activities such as tending her flowerbeds, walking, and doing pilates exercise videos. Plaintiff is still able to do these activities, but not as well or as often as she had prior to the accident. Plaintiff also testified that

she regularly cooked and cleaned at home prior to the accident and that while she can still do these activities, she is not able to perform these tasks as well as she could pre-accident. Plaintiff further testified that she is and has been restricted from driving since the accident and that her sleep is still sometimes disturbed due to pain.

An objective comparison of plaintiff's lifestyle before and after the accident suggests a significant change in her life. Plaintiff's deposition testimony reveals, in short, that Plaintiff had a torn rotator cuff that required several months of therapy, prescription pain medication, and surgery, and that she continues to suffer from neck pain that is currently being treated with steroid injections and is being further investigated. While plaintiff's ability to engage in her household and leisure activities has been impacted in only a minor way, her ability to engage in the 30 hour per week employment position she held for the previous 10 years was severely impacted. The evidence establishes that Plaintiff has been (and remains) restricted from driving for over two years, which likely impacts many facets of her life, from basic grocery shopping to attending all of her medical appointments. As of the date of the trial court's opinion, plaintiff had also been restricted from any employment at the post office for seven months after the surgery and remained so restricted. Plaintiff also has bulging cervical discs, continues to experience pain in her neck and shoulders, and appears to still be under treatment for these conditions. Considering that plaintiff's injuries continue to impair her some 2 ½ years after the accident and that she remains completely restricted from engaging in her primary employment and driving, and lacking any concrete evidence concerning plaintiff's prognosis for eventual recovery, we cannot definitively say that plaintiff's impairment has not affected her general ability to lead her normal life.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto