

STATE OF MICHIGAN
COURT OF APPEALS

MONICA URBAN,

Plaintiff-Appellee,

v

MICHAEL EVAN JACOBSON,

Defendant-Appellant,

and

LONNIE LANE, JR.,

Defendant.

UNPUBLISHED

October 24, 2006

No. 261797

Livingston Circuit Court

LC No. 01-018962-NI

Before: Fitzgerald, P.J., and Markey and Talbot, JJ.

Talbot, J. (*dissenting*).

I respectfully dissent. Specifically, I believe that plaintiff has failed to demonstrate that her injury has affected her general ability to lead her normal life. See *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). I would reverse the trial court's grant of partial summary disposition in favor of plaintiff.

Whether an individual is generally capable of leading her normal life depends on whether the objectively manifested impairment has affected the overall course or trajectory of that individual's life. *Kreiner, supra*, p 130-131. A negative effect on a particular aspect of an injured person's life is insufficient, by itself, to meet the tort threshold if the injured person is still generally capable of leading their normal life. *Id.* at 137.

In this instance, plaintiff returned to work within days of the accident. She worked a normal schedule, without any significant alteration. Plaintiff acknowledged that she still performs most pre-accident activities and responsibilities. Although plaintiff does not engage in certain routine activities in the same duration and frequency as she did pre-accident, she is not precluded from participating in these activities. In accordance with plaintiff's own averments, plaintiff's claimed limitations regarding her ability to tolerate certain activities for extended time periods appear self-imposed and based on real or perceived pain rather than any underlying physical incapacity. Self-imposed restrictions, based on real or perceived pain, are not sufficient to establish impairment. *Kreiner, supra*, p 133 n 17. Hence, although plaintiff has demonstrated

that the accident has had some impact on her activities, she has failed to demonstrate that “the course or trajectory of [her] normal life” has been sufficiently affected to meet the threshold requirements. *Id.* at 131.

I would, therefore, reverse the trial court’s grant of partial summary disposition to plaintiff.

/s/ Michael J. Talbot