

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA M. NELSON,

Plaintiff-Appellee,

v

LINDA MARIE LAMOND and DETROIT
EDISON COMPANY,

Defendants-Appellants.

UNPUBLISHED

June 27, 2006

No. 258510

Livingston Circuit Court

LC No. 03-20247-NI

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

PER CURIAM.

Defendants appeal, by leave granted, the trial court's denial of their motion for summary disposition. Because plaintiff has not demonstrated that any injury incurred as a result of an August 15, 2001 automobile accident affected her general ability to lead her normal life, we reverse and remand for entry of an order of summary disposition in favor of defendants.

This case arises under the no-fault act, MCL 500.3101 *et seq.* Defendant Lamond was driving a vehicle owned by defendant Detroit Edison when she turned into the path of plaintiff Pamela Nelson's vehicle at an intersection. Plaintiff was taken by ambulance to the emergency room where she complained of neck pain and was diagnosed with a cervical strain. Plaintiff previously suffered from chronic neck pain and had undergone fusion surgery on her neck in 1999, but claimed that her condition was aggravated and pain worsened after the accident. Defendants moved for summary disposition under MCR 2.116(C)(10) on the basis that plaintiff did not suffer a serious impairment of body function (i.e., could not establish an objective manifestation of an injury arising from the accident that affected her general ability to lead her normal life). The trial court denied the motion. We granted leave to appeal, and now reverse.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). In evaluating a motion brought under this subrule, the Court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Spencer v Citizens Ins Co*, 239 Mich App 291, 299; 608 NW2d 113 (2000). Where the proffered evidence fails to establish a genuine issue regarding any material fact, however, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court reviews the grant or denial of summary disposition de novo. *Id.*

Under MCL 500.3135(1), “a person remains subject to tort liability for noneconomic loss . . . only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” As used in this statute “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).

The statutory definition of a “serious impairment of body function” 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).

Second, the impairment must be of an important body function. Important body functions include the ability to use the neck, back, legs, or even the ability to walk. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986); *Kern v Blethen-Coluni*, 240 Mich App 333, 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 132. 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.* at 133. Under MCL 500.3135(1), regardless of the presence of a preexisting condition, “recovery is allowed if the trauma caused by the accident triggered symptoms from that condition.” *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000).

Defendants first argue on appeal that plaintiff cannot prove she sustained an objectively manifested injury. Because defendants do not dispute the nature and extent of plaintiff’s claimed injuries, the determination whether plaintiff suffered a serious impairment of body function is a question of law for the court. MCL 500.3135(2)(a)(i), (ii).

In response to defendant’s motion for summary disposition, plaintiff offered emergency room records from the day of the accident, which evidenced a diagnosis of cervical strain. She was also noted to have had immediately worsening neck pain. An MRI two months after the accident showed degenerative changes from an MRI taken six months before the accident and, while plaintiff undisputedly suffered from chronic thoracic back pain prior to the accident, plaintiff provided evidence that the accident exacerbated her condition. This information sufficiently demonstrates a medically identifiable injury or condition that had a physical basis, and thus, plaintiff’s injuries were sufficiently objectively manifested to survive summary disposition.

Defendants also contend, however, that plaintiff did not establish that the injuries affected her general ability to lead her normal life. In making a determination whether a plaintiff’s general ability to lead her normal life has been affected, “a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Kreiner v Fischer*, *supra*, at 132-133. 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 133. Whether a plaintiff's ability to lead his normal life has been affected must be considered in the totality of the circumstances and no one factor in and of itself is determinative. *McDaniel v Hemker*, 268 Mich App 269, 285; 707 NW2d 211 (2005).

An objective comparison of plaintiff's lifestyle before and after the accident suggests no real change. Before the accident, plaintiff suffered from chronic neck pain, took several types of pain medication, and had self-imposed restrictions on household and recreational activities. Plaintiff underwent physical therapy and went to a pain clinic prior to the accident and had surgery on her neck in 1999 to address the pain. According to plaintiff, the surgery did not totally resolve her neck pain. Before the accident, plaintiff worked full time and held an additional part-time job as a cashier at a grocery store. Plaintiff could not recall whether she was on any restrictions because of her neck at the time of the accident.

After the accident, plaintiff's pain decidedly worsened. However, she remained on the same medications she was taking prior to the accident with no increase in dosage. Plaintiff also returned to physical therapy and the pain clinic. Plaintiff continues to work at her full time job and, while she cannot work overtime or return to her second, part-time job as a cashier at a grocery store, the evidence did not reveal how much overtime or part-time employment was actually lost. Plaintiff did not demonstrate that it was a significant amount. Additionally, the only articulated differences in plaintiff's full-time employment are that she now has to use a cart to transport x-rays and charts and cannot sit all day.

With respect to her household and recreational activities, the only activities plaintiff was able to identify as having been additionally restricted after the accident, which were not restricted before were chopping, dicing, stirring, holding pots and pans, inserting table leaves, lifting, mixing, painting, cutting toenails, and camping. While plaintiff did indicate she could not participate in certain activities such as power walking, playing horseshoes, or playing volleyball, she could not recall the last time she participated in such activities. Plaintiff also admitted that certain other activities she could no longer engage in had not been possible for her since prior to her neck surgery. On the facts presented, we find that the difference between plaintiff's preaccident and post-accident life is *de minimus*, and she has failed to demonstrate that her general ability to lead her normal life has been affected. Consequently, she has not suffered a serious impairment of body function as a matter of law, and defendants' motion for summary disposition should be granted on that basis.

Reversed and remanded for entry of an order of summary disposition in favor of defendants.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto