

STATE OF MICHIGAN
COURT OF APPEALS

CRYSTAL LAFLER,

Plaintiff-Appellee,

v

ESURANCE INSURANCE SERVICES, INC.,

Defendant-Appellant.

UNPUBLISHED

February 26, 2009

No. 281328

Kalamazoo Circuit Court

LC No. 07-000161-NI

Before: Whitbeck, P.J., and O’Connell and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s order granting summary disposition for defendant and dismissing plaintiff’s under-insured motorist action claiming non-economic damages for an alleged serious impairment of an important body function. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review de novo a trial court’s decision on a motion for summary disposition. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 334; 745 NW2d 137 (2007). Under MCR 2.116(C)(10), summary disposition is proper only where there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *Tyson Foods, Inc v Dep’t of Treasury*, 276 Mich App 678, 683; 741 NW2d 579 (2007). In conducting our review, we test the factual sufficiency of the complaint, and consider all admissions, affidavits, pleadings, and other documentary evidence in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999).

A plaintiff seeking non-economic damages arising out of the “ownership, maintenance, or use of a motor vehicle” is required by Michigan’s no-fault act to demonstrate a threshold injury. MCL 500.3135(1). This threshold is met if the plaintiff has suffered “death, serious impairment of body function, or permanent serious disfigurement.” *Id.*

Here, plaintiff alleged serious impairment of body function in the form of injuries suffered to her neck and right shoulder as a result of a traffic accident. Due to her injuries, plaintiff’s physicians disabled her from returning to work for nearly 14 months. Surgery was required to repair a labral tear in plaintiff’s right shoulder. Plaintiff claimed that her injuries left her temporarily unable to perform basic functions without assistance, kept her from participating

in several recreational activities, significantly disrupted her ability to sleep through the night, and caused her substantial neck and shoulder pain.

In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), our Supreme Court set forth a “multi step” “basic framework for separating out those plaintiffs who meet the [no-fault] statutory threshold from those who do not.” *Id.* at 131. To pass the *Kreiner* test, a plaintiff must have suffered 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).

When analyzing a plaintiff’s claim under this standard, we must compare the course of 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, supra* at 132. This is accomplished by engaging in an “objective analysis regarding whether any difference between the plaintiff’s pre- and post-accident lifestyle has actually affected plaintiff’s ‘general ability’ to conduct the course of his life,” or to “lead his or her normal life.” *Id.* at 133. In making this determination, we rely on the following “nonexhaustive list of objective factors” that should be weighed: “(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.*

Applying these non-exhaustive factors to the instant case, we hold that the differences between plaintiff’s pre- and post-accident lifestyle are significant enough to warrant a finding that plaintiff’s impairments affected her general ability to lead her normal life. For over a year, plaintiff was disabled from working her normal job. Plaintiff suffered severe muscle pain, had significant trouble sleeping, was unable to perform basic hygiene functions, and could not even share her bed with her husband for months. This was a significant disruption in the “course or trajectory of the plaintiff’s normal life.” *Id.* at 131.

This case is distinguishable from *Kreiner*, where the plaintiff’s objectively manifested impairment of an important body function was found to “not affect his overall or broad ability to conduct the course of his normal life.” *Id.* at 136-137. The reasons the *Kreiner* Court cited for that finding were that *Kreiner*’s “life after the accident was not significantly different than it was before the accident. He continued working . . . and was still able to perform [almost] all the work that he did before . . . His injuries did not cause him to miss one day of work.” *Id.* at 137.

Here, the effect plaintiff’s impairment had on her life is significantly greater than the effect *Kreiner*’s impairment had on his life. Unlike *Kreiner*, plaintiff was not “still able to perform [almost] all the work that [s]he did before.” *Id.* Plaintiff’s employment as a technician for an automobile parts manufacturer required repetitive lifting above shoulder height. Plaintiff’s treating physicians disabled her from returning to work for over a year, whereas in *Kreiner*, the plaintiff’s “injuries did not cause him to miss one day of work.” *Id.* at 137.

Moreover, in *Williams v Medukas*, 266 Mich App 505, 508-509; 702 NW2d 667 (2005), this Court found that limitations that might not rise to the level of a serious impairment of body function for some people could rise to the level of serious impairment of a body function for a person who regularly participated in activities that require a full range of motion. *Id.* at 508-509. While it is unclear whether plaintiff in the case at bar will suffer any permanent limitations due to the cramping she still suffers as a result of her injuries, it is clear that she was limited from

performing her normal job for more than a year due to the physical nature of her employment. Therefore, under *Williams*, we find that although the inability to lift above shoulder height may not have been a serious impairment that would affect the general course of all lives, it was a serious impairment that affected the course of plaintiff's normal life.

Viewing the record in the light most favorable to plaintiff, we conclude that the trial court erred in finding that plaintiff's injuries did not affect her general ability to lead her normal life. Consequently, the trial court erred by granting summary disposition for defendant and dismissing the case.

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

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Donald S. Owens