

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JULIE M. SLEDD and KEITH SLEDD,

Plaintiffs-Appellees,

v

ROBERT COSTA and HELEN BOCCELLA-  
COSTA,

Defendants-Appellants.

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UNPUBLISHED

June 29, 2006

No. 259991

Washtenaw Circuit Court

LC No. 03-001293-NI

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

PER CURIAM.

Defendants appeal by leave granted an order denying their motion for summary dismissal under MCR 2.116(C)(10) and granting summary disposition in plaintiffs' favor under MCR 2.116(I)(2) in this third-party no-fault action. We reverse and remand for entry of an order granting summary disposition for defendants.

On appeal, defendants argue that plaintiff Julie Sledd<sup>1</sup> did not establish that she suffered a serious impairment of body function as required for recovery under MCL 500.3135 in this third-party no-fault action; thus, they were entitled to the grant of summary disposition. After review de novo, considering the record evidence in a light most favorable to plaintiff to determine whether a genuine issue of material fact exists, we agree.<sup>2</sup> See MCR 2.116(C)(10); *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003).

A plaintiff may recover noneconomic damages under the no-fault act only when the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A "serious impairment of body function" is 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). In this case, the trial court concluded that plaintiff suffered a threshold injury. It is undisputed that plaintiff's knee injury was objectively

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<sup>1</sup> Because Keith Sledd's loss of consortium claim is derivative, we refer to Julie Sledd as "plaintiff."

<sup>2</sup> We note that in granting summary disposition in plaintiffs' favor pursuant to MCR 2.116(I)(2), the trial court should not have considered the evidence in a light most favorable to plaintiffs.

manifested and impaired her ability to walk, an important body function; therefore, the disputed issue is whether the impairment affected her general ability to lead her normal life.

In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), our Supreme Court has interpreted the requirement that the impairment “affects the person’s general ability to lead his or her normal life” as including considerations (1) whether a plaintiff is, for the most part, able to lead his normal life, and (2) the effect, if any, of the impairment on the course or trajectory of the plaintiff’s normal life. *Id.* at 130-131. Such conclusions may be drawn from considering the totality of the circumstances and evaluating objective factors like “(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.

After review de novo as a question of law the issue whether plaintiff’s “objectively manifested impairment of an important body function” affected her general ability to lead her normal life, we conclude that it did not. See *id.* at 121. In regard to factors a through c, Julie’s treatment consisted of using crutches for some time, wearing a knee immobilizer, taking pain medication, and as of the date of her deposition, she had recently begun physical therapy scheduled for once a week for a total of six weeks. According to a report from Julie’s orthopedic doctor, Dr. Borden, about two and one-half months after the accident, which occurred on April 5, 2003, the fracture appeared healed, and, according to another report from Dr. Borden, just over three months after the accident, Julie’s knee was “[c]linically and radiographically healed.” Julie also testified that she no longer takes any medication for pain. Therefore, based on the evidence, the knee structurally healed in a relatively short period of time, and with the exception of her currently prescribed physical therapy, Julie’s length of treatment was relatively short.

In regard to factor e, one of Dr. Borden’s reports provides that dashboard injuries involving a knee take a year or more before the person maximally medically improves. According to a report from Dr. Borden, he “explained that with dashboard injuries, improvement continues to occur for up to a year or two after the injury, and sometimes the knee never feels completely back to normal.” Thus, the reports indicate that Julie may experience pain for up to a couple years, and could possibly never “feel completely back to normal<sub>[,]</sub>” which supports her claim that the injury, at least minimally, has affected the course of her life including her ability to lead a normal life without knee problems associated with the injury as she did before the accident.

In regard to her ability to function normally at work, Julie testified that she had worked 40 hours a week as a security aide for the State of Michigan at the Center for Forensic Psychiatry for the last ten years. While Julie stated that she was initially on a three-month limited light duty work restriction following the accident, she admitted that she never missed a day of work because of the accident and continued to work 40 hours a week. She also admitted that she was not under any type of work restrictions as of the date of her deposition. Therefore, with the exception of the three-month long light duty work restriction, Julie was able to work without limitations.

As a matter of comparison, Daniel Straub, one of the injured plaintiffs in *Kreiner*,<sup>3</sup> fractured his nondominant hand and sustained tendon injuries in two fingers that required surgery on his fingers and palm. *Kreiner, supra* at 134-135. Straub's fracture and surgery wounds healed within two months after the accident, and Straub estimated that he was ninety-nine percent normal about four months after the accident. *Id.* at 135. Straub did not work for eight weeks following the accident, *id.*, even though his doctor authorized him to return two weeks earlier, *id.* at 135 n 20, and Straub had been advised not to use his left hand. *Id.* at 135. The *Kreiner* Court reasoned that because the injury was not extensive, the recuperation period was short and virtually complete, and the effect of the injury on the body function was not pervasive, Straub's general ability to lead his normal life was not affected. *Id.* at 135-136.

The fact that Julie was able to work, albeit on a light duty restriction, immediately following the accident supports a conclusion that Julie did not sustain a requisite injury because Straub was medically unauthorized to work for six weeks but the Court still concluded that he did not sustain a requisite injury. *Id.* And similar to the extent of Straub's injuries, Julie's knee, at least structurally, was "[c]linically and radiographically healed" after about three months following the accident.

We recognize that, in regard to factor d, unlike Straub, Julie testified that she experiences constant pain almost every day, that she is unable to squat or kneel without pain, and that she is unable to help subdue patients at work because she does not want to further injure her knee. In further regard to factor d, concerning her everyday activities, Julie testified that before the accident, her hobbies included riding bicycles around her neighborhood maybe twice a week, riding mopeds maybe once or twice a week, vacationing, gardening, and using her computer. In comparison to her post-accident activities, she stated that she could not ride a moped because of pain and that she could not do any gardening because of pain she experienced while kneeling and squatting. Julie stated that she is unable to perform household duties including walking up and down the stairs, moving furniture, and climbing up and down ladders, and also stated that she could not stand or walk for a prolonged period of time. She also stated that before the accident, plaintiffs had sex "three, four, five times a week" but that "we're lucky if it's once a week" since the accident.

Defendants argue that as to factor d, Julie's restrictions at work and home are self-imposed and therefore do not establish that she sustained a threshold injury. We agree. In regard to physician instructions concerning an impairment, again, when there is evidence that a physician has pinpointed a basis for the plaintiff's pain or believes that a plaintiff is actually suffering pain, such evidence supports a conclusion that instructions by the physician constitute physician-imposed restrictions. *McDaniell v Hemker*, 268 Mich App 269, 284-285; 707 NW2d 211 (2005).

In this case, in regard to a doctor visit on September 3, 2003, there are no explicit instructions in the record on what activities Julie should avoid at that time following the accident and there is nothing to indicate that Dr. Borden actually imposed any restrictions or specifically

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<sup>3</sup> *Kreiner* involved consolidated cases in which our Supreme Court concluded that neither of the two plaintiffs' respective impairments affected their ability to live their normal lives. *Kreiner, supra* at 135-137.

gave Julie instructions pertaining to limiting her activities. The *McDaniels* Court stated that, in that case, the doctor instructions for the plaintiff to adjust her level of activities based on the plaintiff's pain level were physician-imposed restrictions based on pain, *McDaniels, supra* at 284-285, but those restrictions were apparently continuing restrictions because the plaintiff suffered expected lifelong injuries. See *id.* at 281-282. By comparison, Dr. Borden's report dated September 9, 2003, provides that Julie did not have any "significant exacerbation of symptoms after [she] returned to work," apparently referring to her working without restrictions. Therefore, without appropriate medical evidence to support Julie's claim of continued residual impairment, we agree with defendants that Julie's restrictions are self-imposed based on footnote 17 from *Kreiner* and this Court's interpretation of that footnote in *McDaniels*.

Thus, based on the totality of the circumstances and evaluating several objective factors, we conclude that, as a matter of law, Julie did not sustain a threshold injury because her impairment did not affect her general ability to lead her normal life.

In light of this analysis, we need not reach defendants' remaining arguments on appeal.

Reversed and remanded for entry of an order granting summary disposition in favor of defendants. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Deborah A. Servitto