

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN McCARTHY,

Plaintiff-Appellant,

v

AMY TERESE STODDARD and ALTON G.
STODDARD,

Defendants-Appellees.

UNPUBLISHED

October 25, 2002

No. 232884

Ingham Circuit Court

LC No. 98-088935-NI

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right from an order granting summary disposition for defendants under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to recover damages for injuries sustained in an automobile accident. The trial court dismissed her complaint, concluding that plaintiff failed to establish that her injuries met the serious impairment threshold.

A person is subject to tort liability for automobile negligence if the injured person suffered death, serious impairment of a body function, or permanent serious disfigurement. MCL 500.3135(1). A serious impairment of body function is defined as “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). Whether plaintiff suffered a serious impairment of body function was a question of law under MCL 500.3135(2)(a). Issues of law and rulings on motions for summary disposition are reviewed de novo. *Kreiner v Fischer*, ___ Mich App ___; ___ NW2d ___ (Docket No. 225640, issued 05/31/02), slip op, 1.

In *Kriener*, *supra*, slip op, 2, this Court observed that the statutory definition of serious impairment may be broken down into three requirements: (1) there must be an objectively manifested impairment, (2) the impairment must be of an important body function, and (3) the impairment must affect the person’s general ability to lead his or her normal life. See also *May v Sommerfield*, 239 Mich App 197, 203; 607 NW2d 422 (1999). In this case, the trial court focused on the third requirement. That factor is to be determined in subjective terms. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

However, the seriousness of the impairment should not be taken into account because the third prong of the statutory definition “does not require any additional proof. It would be improper for us to read any more requirements, limitations, or language into the unambiguous statutory definition.” *Kreiner, supra*, slip op, 3. But see *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001) (in deciding whether the plaintiff’s general ability to lead her normal life, this Court noted that the plaintiff’s injury was minor).

We are satisfied that the trial court did not err in concluding that plaintiff’s impairment did not affect her general ability to lead her normal life. Contrary to plaintiff’s argument, when considering the third prong of the statutory definition, it is appropriate to compare the plaintiff’s lifestyle before and after the accident. *May (After Remand), supra* at 506. See also *Miller, supra* at 249-250. Plaintiff has not needed to substantially curtail her work as long as she switches between sitting and standing, which she said she was able to do in her capacity as a teacher of special education students. She remains able to perform most household tasks, although she does not do as much lifting and does not stand for extended periods, and she can drive for relatively lengthy periods of time.

Although plaintiff’s minor lifestyle changes may be frustrating, the facts do not establish that her impairment affected her general ability to lead her normal life. Compare *Mekir v Bigham*, 147 Mich App 716, 720; 383 NW2d 95 (1985); *Sherrell v Bugaski*, 140 Mich App 708, 711; 364 NW2d 684 (1984); *Flemings v Jenkins*, 138 Mich App 788, 790; 360 NW2d 298 (1984).

Plaintiff’s remaining arguments require little discussion. She contends that given the degenerative nature of her injury, the issue of how much worse it will get and whether any future worsening will affect her ability to lead her normal life were questions of fact for a jury. The problem with this argument is that it is based on speculation that her condition will further deteriorate. We also reject plaintiff’s claim that the trial court erred in equating serious impairment with serious disfigurement or death. In this regard, plaintiff relies primarily on *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986), which was effectively overturned by the Legislature when it amended § 3135 to parallel the definition of serious impairment set forth in *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982). *Kern v Blethen-Coluni*, 240 Mich App 333, 342; 612 NW2d 838 (2000). In *Cassidy, supra* at 503, the Court specifically noted that the serious impairment of body function threshold should be considered in conjunction with the other threshold requirements for a tort action, namely, death and permanent serious disfigurement.

Finally, we note defendants argue that the trial court should have also granted summary disposition on the ground that, while the evidence may have shown that plaintiff suffered an objectively manifested injury, it did not show an objectively manifested impairment. In the absence of a cross appeal, this issue is not properly before this Court. See *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 221; 625 NW2d 93 (2000).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra