

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

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SARAH J. LUTHER,

Plaintiff-Appellant,

V

JAMIE M. MORRIS and MICHAEL MORRIS,

Defendants-Appellees.

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UNPUBLISHED

February 5, 2004

No. 244483

Muskegon Circuit Court

LC No. 01-041095-NI

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

PER CURIAM.

Plaintiff appeals as of right a judgment granting defendants' motion for summary disposition in this action involving a motor vehicle accident in which plaintiff was injured. The trial court ruled that, under MCL 500.3135, plaintiff's injuries did not constitute a serious impairment of body function. Particularly, the trial court found, as a matter of law, that the threshold requirement of serious impairment of body function was not met because the impairment did not affect plaintiff's general ability to lead her normal life. Therefore, plaintiff was not entitled to any recovery for noneconomic loss. We conclude, as a matter of law, that plaintiff's objectively manifested impairment did indeed affect plaintiff's general ability to lead her normal life. Accordingly, plaintiff established a serious impairment of body function and the trial court's judgment is reversed.

On July 23, 2001, plaintiff was driving her car north on M-120 in Muskegon Township. At the same time, defendant Jamie Morris was driving his motor vehicle heading south on the same stretch of road. Morris crossed the centerline and entered plaintiff's lane of traffic, colliding with plaintiff's car. A second collision occurred when a vehicle following directly behind plaintiff's car rear-ended plaintiff as a result of the first collision.

Defendants did not dispute the extent of the injuries sustained by plaintiff in the accident as identified in medical records. The medical records reveal that plaintiff suffered a fractured-dislocated elbow along with other various injuries. Specifically, the emergency room record contains the following diagnosis by the treating room physician:

Motor vehicle accident with right elbow fracture dislocation, chest wall contusion, bilateral forearm contusion as well as a total of 2.0 centimeters of left laceration [to finger] with repair.

A consulting doctor, who examined plaintiff later in the day on the date of the accident, opined:

On physical examination, her elbow is obviously dislocated, swollen, tender, deformed. . . . Her x-ray demonstrates a posterior elbow dislocation. There is a fracture but it is difficult to identify what is fractured as the x-ray is not entirely clear. This was reduced under IV sedation and placed in a posterior OCL splint.<sup>1</sup>

Plaintiff underwent surgery on her injured elbow, and she spent three days in the hospital. Plaintiff testified in her deposition that, as a result of the accident, she missed about a month or more of work as an automobile parts inspector. The records reflect that plaintiff actually missed approximately fifty-two days of work. Plaintiff additionally testified that following the accident she lived with her sister for about three weeks. When asked by counsel what her sister had to do for her, plaintiff responded: "She had to do everything for me." During this time period, plaintiff's injured arm was supported by a sling. Plaintiff was unable to drive for several weeks following the accident. To make matters worse for plaintiff, she is right-handed (injured arm), and due to a prior stroke, the use of her left hand is significantly limited. Plaintiff testified that she did everything with her right hand, which made the injury to the right elbow debilitating. With respect to plaintiff's immobility and limitations in the weeks after the accident, defendants never disputed the fact that she was immobile and limited and required the care of her sister for this period of time.

The documentary evidence also indicated that plaintiff, as a result of the elbow injury, was unable to hold a coffee pot, dropped objects at home, needed the assistance of coworkers to carry heavy items at work, could not bow hunt, had difficulty taking the garbage out, washing dishes, and bathing, and suffered pain on lifting herself out of bed in the morning.

Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff could not show that she suffered an impairment that affected her general ability to lead her normal life. Defendants expressly conceded that the elbow injury was objectively manifested and concerned an important body function, and defendants continue to maintain this position on appeal. The trial court granted defendants' motion for summary disposition, ruling that "[t]he injuries recited do not . . . sufficiently affect . . . her general ability to lead her normal life." The trial court appeared to view the effect of the impairment on plaintiff's life in terms of her life at the time of summary disposition, a year after the accident. In light of the trial court's ruling and defendants' arguments, our focus is on whether the impairment affected plaintiff's general ability to lead her normal life.

Under the no-fault act, a plaintiff may recover noneconomic losses only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious

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<sup>1</sup> The records also indicate that plaintiff had a bruised knee. Plaintiff's deposition testimony reflects that she complained of headaches and stomachaches following the accident. Further, plaintiff complained of occasional sharp, severe pain in her elbow, and a limited range of motion.

disfigurement." MCL 500.3135(1); *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 682; 671 NW2d 95 (2003), lv gtd 469 Mich 948 (2003). The issue whether a person has suffered a serious impairment of body function is a question of law for the trial court to decide where the court finds that there is no factual dispute concerning the nature and extent of the person's injuries, or where there is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a); *Kreiner, supra* at 682-683.

MCL 500.3135(7) defines "serious impairment of body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." The *Kreiner* panel, quoting its earlier decision, stated:

"The statutory definition of serious impairment in MCL 500.3135(7) can be broken down into three requirements that must be established in order to find a serious impairment of body function. First, there must be an objectively manifested impairment. Second, the impairment must be of an important body function. Third, the impairment must affect a person's general ability to lead his or her normal life." [*Kreiner, supra* at 684.]

In *Kreiner*, this Court explored the meaning of the third requirement that the impairment affect a person's general ability to lead his or her normal life. *Id.* at 687-690. Our Supreme Court had stated in its remand order that, "[a]lthough a *serious* effect is not required, *any* effect does not suffice either." *Id.* at 682, quoting 468 Mich 884 (2003). The *Kreiner* panel stated that "one's general ability to lead his or her normal life can be affected by an injury that impacts the person's ability to work at a job, where the job plays a significant role in that individual's normal life[.]" *Id.* at 688. The Court further stated that "[t]he Supreme Court's remand order can be read to require that when considering a person's 'general' ability to lead a normal life, the focus must be on multiple aspects of the person's life, i.e., home life, relationships, daily activities, recreational activities, and employment[.]" *Id.* at 689.

Here, there can be no dispute that for the first month or two following the accident, plaintiff's elbow impairment and other injuries affected her general ability to lead her normal life. Plaintiff could not work at all for about fifty-two days,<sup>2</sup> she was unable to drive, and her mobility and range of motion was so limited that she depended fully on the care of her sister. Multiple aspects of plaintiff's life were indeed affected, and the trial court erred in focusing on plaintiff's condition at the time of the hearing. We opine, however, that within a couple of months of the accident, although she still had physical ailments, problems, and some limitations, plaintiff's ability, in general, to lead her normal life had returned. The question thus becomes whether the time period during which plaintiff's impairment affected her general ability to lead her normal life was sufficient to conclude that she had suffered a serious impairment of body function.

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<sup>2</sup> Plaintiff had been employed in the job for 36 years.

In *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000), this Court stated that “[i]n determining whether the impairment of the important body function is ‘serious,’ the court should consider the following nonexhaustive list of factors: extent of the injury, treatment required, *duration of disability*, and extent of residual impairment and prognosis for eventual recovery.” (Emphasis added; citation omitted.) We first note that these factors are not specifically listed in the statutory definition of serious impairment of bodily function. Indeed, as to duration of disability, there is no temporal framework included in the definition of serious impairment of body function. MCL 500.3135(7) simply provides that the objectively manifested impairment of an important body function must affect the person's general ability to lead his or her normal life. It does not provide that the impairment must affect one's general ability to lead his or her normal life for some minimal required time period, and as pointed out by the Supreme Court, the effect need not be serious. “[A] court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The *Kern* panel did hold that an injury need not be permanent to constitute a serious impairment of body function. *Kern*, *supra* at 341. The *Kern* Court set forth factors to be considered and specifically discussed duration of disability. We are bound by that decision.

In *Kern*, *id.* at 343, this Court concluded:

The present case similarly involves a serious femur fracture and plaintiff's inability to walk for three months. Walking is an important body function. Although plaintiff had a good recovery, “an injury need not be permanent to be serious.” In light of the seriousness of the initial injury, the treatment required, and the duration of disability, we hold that plaintiff sustained a serious impairment of body function. [Citation omitted.]

Here, plaintiff suffered a “right elbow fracture dislocation,” requiring surgery and the placement of her arm in a sling, and precluding use of the arm, which is an important body function. This was a serious injury, especially where plaintiff already had limited use of her left hand. And although plaintiff has made a fairly good recovery, her injury need not be permanent. We recognize that the timeframe in which the plaintiff in *Kern* was disabled is slightly longer than the period in the case at bar; however, we find it long enough to support a finding that plaintiff sustained a serious impairment of body function.<sup>3</sup> Accordingly, the trial court erred in finding that plaintiff had not suffered an impairment that affected her general ability to lead her normal life. Moreover, we find that as a matter of law plaintiff suffered a serious impairment of body function in light of the undisputed facts. Therefore, plaintiff has met the legal threshold necessary to make a claim for noneconomic damages.

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<sup>3</sup> In *Straub v Collette (On Remand)*, 258 Mich App 456, 462-463; 670 NW2d 725 (2003), lv gtd 469 Mich 948 (2003), this Court found a serious impairment of body function where the plaintiff lost the use of his left hand for three months, which significantly affected the plaintiff's general ability to lead his normal life given the work and tasks that he performed before the accident. Here, it was plaintiff's right arm that was incapacitated for only a month or so less than the period in *Straub*.

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

/s/ Jane E. Markey

/s/ William B. Murphy