

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

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LINDA LUTHER,

Plaintiff-Appellant,

v

KARLA MICHELLE STOECKLE and DEBRA  
KAY STOECKLE,

Defendants-Appellees.

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UNPUBLISHED

May 1, 2008

No. 280772

Huron Circuit Court

LC No. 06-003258-NI

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. Because we conclude that there were no errors warranting relief, we affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Plaintiff was injured in a rear end collision that occurred in November 2003. Plaintiff sought treatment the following day for pain in her lower back, neck, shoulders, and right leg. Imaging revealed that plaintiff had not sustained any fractures, but it was noted that there was some disc space narrowing in her lower back. Plaintiff was discharged with a diagnosis of neck and back pain.

An MRI later revealed that a herniated disc, which had previously been identified in an August 2001 MRI<sup>1</sup>, had been at least slightly exacerbated. Surgeons performed a laminectomy on plaintiff in December 2003. Plaintiff had rehabilitation therapy through March 2004, and testified at her deposition that the laminectomy was so successful in eliminating her pain that she "wanted to do cartwheels." Plaintiff has a four-inch scar from the surgery.

At the time of the accident, plaintiff worked as a factory operator, but was laid off because her employer was unable to accommodate the restrictions imposed on her after the

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<sup>1</sup> Plaintiff had a significant history of back pain from as early as 1995. Indeed, plaintiff had previously had physician-imposed restrictions on her ability to work because of the severity of the pain.

accident. She has since taken clerical positions. Although plaintiff remains under physician-imposed lifting restrictions, her recreational activities include golfing, bowling, playing darts, shooting pool, and traveling. Plaintiff requires some assistance in performing housework, but is able to rake leaves, paint, and do minor remodeling projects.

Defendants moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff's injuries did not meet the impairment threshold. The trial court granted the motion.

On appeal, plaintiff argues that the trial court erred when it concluded that the injuries she suffered in the car accident did not constitute a serious impairment of body function. We disagree. We review de novo a trial court's decision on a motion for summary disposition. *Associated Builders & Contractors v Wilbur*, 472 Mich 117, 123; 693 NW2d 374 (2005).

A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1).<sup>2</sup> "[S]erious 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).

To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person's entire normal life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). In determining whether the course of a person's normal life has been altered, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Id.* at 132-133. The court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for recovery. *Id.* at 133. Self-imposed restrictions based on real or perceived pain, as opposed to physician-imposed restrictions, do not establish residual impairment. *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005).

Plaintiff alleges that she has suffered an objectively manifested impairment to an important body function that has generally affected her ability to lead her normal life. In support of this claim, she notes that she has had to change jobs, has physical restrictions and suffers recurring pain. However, plaintiff has not provided medical documentation for these claims, or even a complete copy of her deposition transcript. Even assuming plaintiff's references to evidence provided by defendants in their summary disposition brief were sufficient, we are persuaded summary disposition was properly granted in this case. Plaintiff's back pain was objectively manifested and the ability to use and move one's back is an important body function. *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986). However, plaintiff has not demonstrated that her general ability to lead her normal life has been affected. *Kreiner, supra* at 130-131.

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<sup>2</sup> We note that plaintiff asserts that she will be able to establish economic damages in excess of the no-fault benefits. However, plaintiff presents no argument concerning the propriety of the trial court's decision to grant summary disposition in light of this claim. Therefore, the issue is not properly before us.

Plaintiff had a long history of back pain, which included work and lifting restrictions, prior to the November 2003 accident. And, although plaintiff has been unable to return to her previous job, her deposition testimony reveals that she has no health barriers to pursuing a clerical position. Plaintiff is also able to pursue most of her normal recreational activities.

Finally, plaintiff's contention that the surgical scar constitutes a serious disfigurement is unpersuasive. A determination as to whether a particular scar is a permanent serious disfigurement is a question that should be answered using common knowledge and experience. *Nelson v Myers*, 146 Mich App 444, 446 n 2; 381 NW2d 407 (1985). The scar at issue is relatively small and is not visible with her normal dress. We conclude that such a scar does not meet the threshold requirement for a serious disfigurement as a matter of law. Cf. *Minter v Grand Rapids*, 275 Mich App 220, 228-229; 739 NW2d 108 (2007).

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski