

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

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PAOLA SALVATI,

Plaintiff-Appellant,

v

CHRISTOPHER MICHAEL STOICA,

Defendant-Appellee.

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UNPUBLISHED

July 17, 2008

No. 275966

Genesee Circuit Court

LC No. 06-083364-NI

Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

In the case brought under Michigan no-fault insurance act, MCL 500.3101 *et seq.*, plaintiff appeals of right from the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff was in an automobile accident in March 2004. She was taken to the hospital, where she was examined and released. Shortly afterward, plaintiff visited her family doctor complaining of pain in her neck. Plaintiff's doctor diagnosed a herniated disc in plaintiff's spine, and advised plaintiff not to strain her neck. Plaintiff visited her doctor concerning her pain on three or four occasions. According to plaintiff, her pain has not improved since the accident. She asserts that she cannot lift heavy objects or do certain repetitive tasks like sweeping, but she maintains that she is able to care for her home and her children. Plaintiff has had several jobs since the accident, but left each one for reasons largely unrelated to her pain.

A plaintiff can recover noneconomic damages in a motor vehicle negligence action "if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). The term "serious impairment of body function" is defined by statute 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 a plaintiff's injury reaches the serious impairment of body function threshold is a question for the court to decide if no issue of material fact exists. *Behnke v Auto Owners Ins Co*, 474 Mich 1004, 1005; 708 NW2d 102 (2006). The inquiry is focused on three issues: (1) whether a body function is impaired, (2) whether the impairment is objectively manifested, and (3) whether the impairment affects the person's ability to live a normal life. *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004). Objective manifestation of an impairment "requires that a plaintiff's injury must be capable of objective verification by a qualified medical

person either because the injury is visually apparent or because it is capable of detection through the use of medical testing.” *Netter v Bowman*, 272 Mich App 289, 305; 725 NW2d 353 (2006).

The trial court found that plaintiff did not meet this test because the course of her normal life had not been sufficiently affected by her injuries. While defendant asserted that plaintiff’s injuries were pre-existing, and not caused by the accident, the court implicitly found this issue of fact to be immaterial to his decision.

“In determining whether the course of the plaintiff’s normal life has been affected, a court should engage in a multifaceted inquiry, comparing 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 132-133. *Kreiner* noted that “[m]erely any effect on the plaintiff’s life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff’s general ability to lead his life.” *Id.* (internal quotations and emphasis removed). The Court gave a “nonexhaustive” list of factors to consider: “(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. The duration of the impairment may not be established by self-imposed restrictions, but must be evidenced by physician-imposed restrictions. *Id.* n 17. The focus is on injuries affecting how the body functions, not on a plaintiff’s pain and suffering. *Netter, supra* at 295. An injury that affects the person’s general ability to lead his or her normal life does not need to be permanent but must be of sufficient duration to affect the course or trajectory of the plaintiff’s life. *Kreiner, supra* at 135.

Plaintiff likens her situation to that of the plaintiff in *McDaniell v Hemker*, 268 Mich App 269; 707 NW2d 211 (2005). In *McDaniell*, the Michigan Court of Appeals applied the *Kreiner* analysis to find that a plaintiff’s head and neck injuries had affected her ability to lead her normal life, based on the following facts:

McDaniell’s injuries resulted in her being out of work approximately six to seven months, needing assistance from coworkers while currently employed because of the pain, having to forgo recreational activities once enjoyed, significantly curbing her household chores, limiting her gardening activities, interfering with her sleep habits, decreasing intimacy with her husband, and has resulted in years of visits to doctors for tests and treatments, which treatments included the use of pain medications, nerve blocks, muscle relaxers, and physical therapy, with a prognosis that she will continue with such a regimen, in whole or in part, because she will most likely have pain for the remainder of her life. [*Id.* at 281.]

The present case is distinguishable from *McDaniell*. In *McDaniell*, the plaintiff was out of work for several months, and then underwent a difficult transition back into work. *Id.* at 275-277. In the present case, plaintiff was out of work for about two weeks, then moved between jobs largely for reasons unrelated to her injuries. The plaintiff in *McDaniell* had to abandon several recreational activities as well as some of her household chores because of her disability, leaving the chores to her children. *Id.* at 280. Plaintiff here admits that she continues to walk and swim with her children, and is able to manage her household, though she experiences pain while doing so.

Perhaps most telling, the plaintiff in *McDaniel* saw her primary-care physician and a pain specialist regularly for years in an attempt to gain some relief from her pain. *Id.* at 275-279. Her pain specialist concluded that her injuries were permanent and would require continuing treatment. *Id.* at 278. Plaintiff, by contrast, visited with her primary care physician on only three or four occasions shortly after the accident. She failed to document any stay-home recommendations or restrictions.

While the five factors mentioned in *Kreiner* are not dispositive, they are enlightening in this case. The “nature and extent” of plaintiff’s impairment is the first factor. *Kreiner, supra* at 133. Plaintiff’s impairment is based on an upper back injury. It has been found that the movement of the back is considered an important body function. *Shaw v Martin*, 155 Mich App 89, 96; 399 NW2d 450 (1986). And while the nature of back injuries can be quite severe and debilitating, the extent of plaintiff’s injury seems limited. For example, plaintiff is able to swim, exercise, to care for her children, and take care of her household. She was also able to hold down a series of jobs. While plaintiff has experienced some variation to her lifestyle, minor lifestyle changes, although frustrating, do not necessarily rise to the level of affecting plaintiff’s ability to lead her normal life. See *Behnke, supra* at 1005.

The second factor, plaintiff’s treatment for her impairment, *Kreiner, supra* at 133, has been negligible in both type and length. She visited her primary-care physician on a few occasions shortly after her accident, but she has not sought continuing help for her pain, and has failed to establish that her doctor restricted her activities in any way.

The third and fourth factors are “the duration of the impairment” and “the extent of any residual impairment.” *Id.* Presumably, plaintiff’s original impairment was the initial injury from the accident, which caused her to miss two week’s work at the bakery. Her residual impairment would be the extent to which she continues to suffer from those injuries. Plaintiff has provided little to no evidence of her residual impairment other than her own testimony, which centers on limitations she has placed on herself. “Self-imposed restriction, as opposed to physician-imposed restriction, based on real or perceived pain do not establish” plaintiff’s residual impairment. *Id.* at n 17.

The final factor, “the prognosis for eventual recovery,” probably militates in favor of plaintiff to the extent that she is currently impaired. *Id.* at 133. Her physician diagnosed her with a ruptured disc, but did not recommend surgery or physical therapy. With no planned resolution, plaintiff will presumably continue to suffer in the same manner she has been.

Plaintiff compares this case with *McDaniel*, but the present case is more closely comparable to *Behnke*. In *Behnke*, the Michigan Supreme Court found that a plaintiff was “generally able to lead his normal life” where the trial court found the following facts:

“As a result of the accident plaintiff was never hospitalized nor underwent surgery. He was off work for eight weeks, but has since worked full time both as a welder and sawyer. He went to physical therapy on one occasion and did not return. No doctor has placed plaintiff on medical or work restrictions. Further, the headaches and neck pain do not limit range of motion other than such motion normally associated with headaches and occasional neck pain. Currently, plaintiff takes non-prescription medication for his headaches.” [*Behnke, supra*,

474 Mich at 1004, quoting *Behnke v Auto Owners Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued September 16, 2004 (Docket No. 248107) (Griffin, J., dissenting), p 3 (quoting trial court).]

Plaintiff's life has remained generally the same before and after her accident. While she left her employment, her leaving was due, largely, to factors other than her injuries. While plaintiff complains of pain, she has not let that pain stop her from being a full-time mother to her two children. She takes them swimming, to the park, for walks, and to various school and church functions. In this case, "the ultimate question that must be answered is whether the impairment 'affects the person's general ability to conduct the course of his or her normal life.'" *Kreiner, supra* at 134. Because plaintiff's impairment has not, overall, altered the trajectory of her normal life, she was not entitled to collect noneconomic damages under the no-fault insurance act.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot  
/s/ Pat M. Donofrio