

STATE OF MICHIGAN
COURT OF APPEALS

BERNICE RICHMOND,

Plaintiff-Appellant,

v

GARY W. STROUP and BERNICE L. LONG-
STROUP,

Defendants-Appellees.

UNPUBLISHED

August 12, 2008

No. 278177

Genesee Circuit Court

LC No. 06-084311-NI

Before: Markey, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

This action arises out of injuries sustained by plaintiff in an automobile accident with defendant, Bernice L. Long-Stroup. Long-Stroup, while operating defendant Gary Stroup's automobile, pulled out of a parking lot without yielding to oncoming traffic, and collided with the front passenger side of plaintiff's automobile. Plaintiff sustained fractures of a rib, her left wrist and right ankle in the accident.

The circuit court granted defendants' motion for summary disposition, which argued solely that plaintiff's injuries did not affect the course of her normal life. On appeal, plaintiff argues that she presented sufficient evidence to raise a genuine issue of material fact regarding whether the injuries affected her ability to live her normal life. We agree.

On appeal, this Court reviews a trial court's determination regarding a motion for summary disposition de novo. *MacDonald v PKT, Inc.*, 464 Mich 322, 332; 628 NW2d 33 (2001). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in [the] light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins.*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *MacDonald, supra*, p 332.

Under the no-fault act, a person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person

has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1); *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). A serious 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); *Kreiner, supra* at 127-128. Therefore, 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. *Id.* at 130-131. The court must examine the plaintiff's whole life before and after the accident. Then, the court must assess the "significance of any affected aspects on the course of the plaintiff's overall life." *Kreiner, supra* at 132-133.

The following nonexhaustive list of objective factors may be of assistance in evaluating whether the plaintiff's "general ability" to conduct the course of his normal life has been affected: (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 extent of a residual impairment is not established by self-imposed restrictions based on real or perceived pain. *Id.* at 133 n 17; *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005). However, a self-imposed restriction may be considered where it is not based on pain, but rather, because the plaintiff is physically incapable of performing the activity. *McDaniel, supra* at 283.

"An impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff's life is extensive." *Williams v Medukas*, 266 Mich App 505, 508; 702 NW2d 667 (2005), citing *Kreiner, supra* at 134.

Plaintiff claims that her injuries have affected the trajectory of her normal life with respect to limitations following the accident. The accident occurred on January 11, 2006. Plaintiff was taken by ambulance to the emergency room, where her wrist was set. Plaintiff testified that she required and received personal attendant care for nine months following the accident. She testified that she needed assistance bathing, dressing herself, and doing her hair, and could not cook or clean. Because of her rib fracture, she could not lie on her side for three months. Further, plaintiff was in and out of casts and braces for her ankle before she underwent ankle surgery on August 28, 2006, and was again in casts for several months after the surgery. Medical records submitted below establish that plaintiff was in a nonweight bearing cast and had to use crutches until October 6, 2006. Because of her ankle injury alone, plaintiff was in casts from the time of the accident in January 2006 until late November 2006, approximately 11 months. Dr. Susan Mosier-LaClair, one of plaintiff's treating doctors following the accident, disabled her from housework and caring for her personal needs until January 31, 2007. The disability certificate Dr. LaClair signed stated that "patient [plaintiff] is disabled from doing:"

"Housework" as housework involves **bending, lifting, twisting** and **prolonged standing** as required by changing linens, making beds; washing floors, sinks, bathtubs, toilets, dusting low objects; polishing furniture; moving furniture; picking up objects off floors; carrying garbage; caring for pets, etc.

[and]

“Caring for the patient’s personal needs” which includes **bending, twisting, lifting, prolonged standing** by bathing the patient; dressing the patient, driving the patient; cooking for the patient; fetching, carrying and lifting things for the patient, etc. [Emphasis in original.]

Plaintiff testified at her March 6, 2007 deposition (approximately 14 months post-accident) that her wrist and ankle continue to give her problems. She testified that before the accident she planted flower gardens, but can no longer do so because she cannot dig or stoop to plant. She testified that she planted in 2005 but did not in 2006. Plaintiff testified that she still cannot lift heavy pots and that her husband continues to do the cooking, as he has since the accident. Plaintiff testified that although she can push a vacuum cleaner with her right hand, she cannot lift and/or twist it. She testified that she can only grocery shop for small items, like bread, because lifting heavy items causes her pain, and that her husband must therefore do most of the grocery shopping. At her deposition, plaintiff was wearing a wrist brace prescribed by a doctor, which she testified helped maintain her wrist steady and helped to reduce pain.

Plaintiff also testified that because of her injuries she cannot stand for one hour without resting because her ankle gets stiff and numb. She testified that before the accident she led prayer service at her church every Sunday, and sang in the choir, which required standing for more than one hour. She cannot lead prayer service anymore because it requires an hour of standing, and no longer sings in the choir for the same reason.

The evidence submitted below sufficiently supported that plaintiff was limited in her ability to care for her personal needs, to perform housework, and to engage in activities that were important to her and integral to her life before the accident, including leading prayer service at her church, singing in the church choir, and gardening, for more than one year following the January 11, 2006 accident, i.e., until at least January 31, 2007.

As to employment, plaintiff testified at deposition that before the accident she worked as a dispatcher at MTA, and typed for eight to ten hours a day. She testified that she did not return to work at MTA after the accident because she could not type for any length of time because of her left wrist injury and consequent pain, and that her typing speed had decreased from 70 wpm to 20 wpm. Appended to plaintiff’s response to defendants’ motion for summary disposition was a prescription form from Dr. Dass’s office stating that plaintiff “left old job due to distal radius [fracture] and could not type all day 8-10 hours.” Other medical records submitted below establish that the doctors plaintiff treated with after the accident on various occasions disabled plaintiff from working, including until October 6, 2006 because of her ankle surgery. Plaintiff testified at her deposition that she had been working part-time as an insurance sales agent since approximately April 2006. She testified that in her new job, which is part-time, she does not go into the office every day, works from home some days, and that there is less typing involved than at MTA. Plaintiff testified that she had formerly worked as an insurance sales agent for two

other insurers and had an agent's license. She also testified that she was able to perform her job as a part-time insurance sales agent.¹

The record supports that plaintiff left her job at MTA because she could no longer type 8-10 hours a day. The record supports that plaintiff needed to obtain different employment as a result of the injuries she sustained in the accident, and that, to that extent, her employment, her work life, was affected.² That plaintiff managed to work part-time in a different job beginning around April 2006 does not alter our conclusion.

Plaintiff provided evidence supporting that her ability to care for her personal needs, and to do housework (and activities involving lifting, bending, twisting and prolonged standing), and her work life were seriously affected by the injuries she suffered, and the consequent surgery and casts and crutches. We thus conclude that plaintiff established that her general ability to conduct the course of her entire normal life was affected from the date of the accident, January 11, 2006, until at least January 31, 2007. See *Williams, supra* at 508, citing *Kreiner, supra* at 134 (impairment of short duration may constitute a serious impairment of body function if its effect on plaintiff's life is extensive).

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

/s/ Jane E. Markey
/s/ Helene N. White

¹ Plaintiff's affidavit, filed after she was deposed, stated that her husband had to help her with her sales agent responsibilities, and did so by driving her to clients' homes, and helping her in and out of the car. The circuit court concluded that since plaintiff testified on deposition that she was able to perform her job as a sales agent, her affidavit impeached her deposition testimony. We do not find these statements intrinsically inconsistent.

² Although plaintiff's complaint alleged that as a result of the accident she lost earnings and would indefinitely, plaintiff did not present evidence in response to defendants' motion for summary disposition that her change from full-time work at MTA to part-time work as an insurance sales agent negatively affected her income.