

STATE OF MICHIGAN
COURT OF APPEALS

JEANENE ADAMS and BEVERLY ADAMS,

Plaintiffs-Appellants,

v

WILLIE HODGE,

Defendant-Appellee.

UNPUBLISHED

August 26, 2008

No. 279023

Wayne Circuit Court

LC No. 06-611370-NF

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

In this threshold case under the no-fault act, MCL 500.3101 *et seq.*, plaintiff¹ appeals as of right from the circuit court's order granting summary disposition to defendant and dismissing the case. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In November 2005, plaintiff suffered a fracture of her wrist in a two-car collision with defendant. Surgery followed, resulting in placement of a plate and six pins in the wrist, apparently permanently. Three dozen physical therapy sessions followed, and plaintiff continuously wears a brace on her wrist in response to swelling and pain.

Plaintiff was placed on medical disability from her employment as a wardrobe attendant at a casino from November 14, 2005, until February 9, 2006. Plaintiff complains that she now suffers pain while doing her job, and that residual pain causes her difficulties in bathing, driving, cooking, and housework. Plaintiff reports that, for three or four weeks after the accident, a cousin assisted her with housework.

¹ Plaintiff-appellant's mother, plaintiff Beverly Adams, was also involved in the accident, but died shortly afterward for unrelated reasons. Her injuries admittedly did not meet the threshold for recovery under the no-fault act. Accordingly, references to the singular "plaintiff" in this opinion will refer exclusively to Jeanene Adams.

Plaintiff filed suit seeking damages in tort under the no-fault act. Defendant moved the trial court for summary disposition. The court granted the motion on the ground that plaintiff had failed to present evidence that her injury had changed the trajectory of her life.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

MCL 500.3135(1) provides that 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." Subsection (7) states that, "'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." Subsection (2)(a) establishes that whether a person has suffered serious impairment of a body function is a question of law for the court, where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered serious impairment of a body function. Accordingly, "the issue . . . should be submitted to the jury only when the trial court determines that an 'outcome-determinative genuine factual dispute' exists." *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), quoting *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

Our Supreme Court's decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), indicates that the conditions reinstating tort liability under the no-fault act are not lightly to be found. "Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if . . . the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected" for purposes of establishing a serious impairment. *Id.* at 131. The focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body. *Miller, supra* at 249. Residual impairments based on perceived pain are a function of "physician-imposed restrictions," not "[s]elf-imposed restrictions." *Kreiner, supra* at 133 n 17.

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 (footnote omitted).]

In this case, plaintiff reports only that she needed assistance with housework for three or four weeks, and was disabled from her employment for less than 90 days. She otherwise complains that pain bedevils her in the performance of many tasks, but, except for stating that she cannot operate a vacuum cleaner anymore, and has switched to shoes without laces, she does not indicate that her injury has wholly precluded her from continuing any of her pre-accident

activities. Instead, she protests only that pain accompanies many of her activities, sometimes causing her to limit or modify how she does them.

We conclude that the impediments of which plaintiff complains bring to light inconveniences, but not a change in the trajectory of her life. Significantly, plaintiff points to no physician-imposed restrictions on any of her activities. See *id.* at 133 n 17. For these reasons, the trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly