

STATE OF MICHIGAN
COURT OF APPEALS

DORNITHEA VESEY,

Plaintiff-Appellant,

v

ATHEA Y. AL-MULLA and AMAR Y. AL-MULLA,

Defendants-Appellees.

UNPUBLISHED

March 31, 2009

No. 283987

Wayne Circuit Court

LC No. 07-702100-NI

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

In this serious impairment of body function threshold case under the no-fault insurance act, MCL 500.3101 *et seq.*, plaintiff appeals as of right the trial court order granting summary disposition to defendants pursuant to MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in an accident on October 18, 2005, when the car she was driving was rear-ended by a car driven by defendant Athea Y. Al-Mulla and owned by plaintiff Amar Y. Al-Mulla. Plaintiff did not immediately go to the hospital after the accident but she was thereafter diagnosed with two bulging discs at L3-L4 and L4-L5, lumbar radiculopathy, and disc protrusion at L4-L5.

Plaintiff was let go from her job at a Westin Hotel in early 2005 due to carpal tunnel syndrome. Prior to the accident, plaintiff did not have a job, but was able to cook, clean, do laundry, and take care of her family. She also enjoyed dancing with her husband, playing volleyball, walking around an athletic track occasionally, shopping, and attending her daughter's activities. Since the accident, plaintiff claims she is unable to do household chores, cook, or shop due to the pain it causes. She is also unable to attend her daughter's activities because it is too painful to sit down and watch them. Plaintiff states these activities were a major part of her life.

This Court reviews a trial court's decision on a motion for summary decision *de novo*. *Associated Builders & Contractors v Consumer & Industry Services Director*, 472 Mich 117, 123; 693 NW2d 374 (2005); *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Viewing the documentary evidence submitted by the parties in a light most favorable to the non-moving party, summary disposition is appropriate under MCR 2.116(C)(10) if there is no

genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). There is a question of material fact if the record leaves open an issue upon which reasonable minds could differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

On appeal, plaintiff argues she presented sufficient evidence to establish that her objectively manifested injury resulted in a serious impairment of bodily function, which affects her general ability to lead her normal life. We disagree.

Under the no fault insurance act, MCL 500.3101 *et seq.*, tort liability for noneconomic losses is generally limited to instances in which the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1); *Hardy v Oakland Co*, 461 Mich 561, 565; 607 NW2d 718 (2000); *Williams v Medukas*, 266 Mich App 505, 507; 702 NW2d 667 (2005). The purpose of the injury threshold is to bar recovery for noneconomic loss, and thus control the cost of insurance and relieve courts of litigation, unless an injury is serious. *Byer v Smith*, 419 Mich 541, 545; 357 NW2d 644 (1984); *Stevenson v Reese*, 239 Mich App 513, 519; 609 NW2d 195 (2000).

A serious impairment of body function is an objectively manifested impairment of an important body function that affects the person's general ability to lead his normal life. MCL 500.3135(7); *Kreiner, supra*. In the case at bar, the trial court found that plaintiff presented enough evidence to establish an objectively manifested impairment of an important body function. Therefore, the only issue on appeal is whether plaintiff's impairment affected her general ability to lead her normal life; whether the plaintiff is, for the most part, able to lead her normal life. *Kreiner, supra* at 130.

In determining whether the impairment has affected the plaintiff's general ability to lead her normal life, a court should consider the extent of the injury, the treatment required, the duration of the disability, the extent of residual impairment and the prognosis for eventual recovery. *Id.* at 133-134. In assessing the extent of the injury, a court should compare the plaintiff's lifestyle before and after the injury. *Id.* at 132. An injury need not be permanent to be an impairment of an important body function, but if the person's general ability to lead his normal life has not been affected, he has not suffered a serious impairment *Id.* at 130, 135.

Self-imposed restriction based on perceived or real pain, as opposed to doctor-imposed restrictions, does not establish the extent of any residual impairment. *Id.* at 133 n 17. Conversely, physician imposed restrictions, based on a patient's real or perceived pain, can establish the extent of a residual impairment. *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005). There is a difference between self-imposed limitations due to pain, and self-imposed limitation based on physical inability. The latter can support a finding that the plaintiff has suffered a threshold injury. *Id.* at 283-284. Finally, a physician's recitation of a physiological basis for the pain can provide support for the conclusion that the restrictions are physician-imposed. *Id.* at 284.

Plaintiff admitted during her deposition that there are no doctor's orders restricting her physical activities. Plaintiff's MRI and film scans show some degenerative changes with the disc and some slight disk protrusions at L1-L2 to the left and a little broad based bulge at 3-4, but neither requires surgery. Further, there is no record of physician-imposed restrictions based on

plaintiff's pain. See *Williams, supra*. Finally, the record is devoid of any physician imposed restricting plaintiff from certain activities, merely a doctor's note in a chart that she continues to complain of pain from her back issues. The trial court did not err in concluding that while plaintiff demonstrated the impairment of an important body function, the evidence that her restrictions appear to be completely self-imposed based on perceived pain, is not sufficient to establish a genuine issue of material fact as to whether she has the ability to lead her normal life. *Kreiner, supra* at 132-134, 133 n 17; *McDaniel, supra*.

Accordingly, as a matter of law, plaintiff failed to establish that she suffered a serious impairment of body function, MCL 500.3135, and the trial court properly granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto