

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH A. COOK,

Plaintiff-Appellant,

V

CHRISTOPHER W. HARDY,

Defendant-Appellee.

UNPUBLISHED
February 24, 2005

No. 250727
Ingham Circuit Court
LC No. 02-001399-NI

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's car backed into plaintiff at a high rate of speed, striking her right leg and throwing her ten to twelve feet into the air. He then sped away. Plaintiff sustained acute fracture of the mid-shaft of the right tibia and acute, displaced fracture of the right fibula. The force of the impact also bent a titanium rod that had been surgically inserted in plaintiff's right tibia as a result of an earlier injury. At the time of the accident in this case, plaintiff was no longer under a physician's care for the earlier injury.

Plaintiff filed suit alleging that the injuries sustained in the accident constituted serious impairment of body function under the automobile no-fault act. MCL 500.3135(1). The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), seeming to focus on the duration of plaintiff's impairment and suggesting that the limitations on her ability to lead a normal life were self-imposed. We review a trial court's decision on a motion for summary disposition de novo, making all legitimate inferences in favor of the nonmoving party, in this case plaintiff. *Skinner v Square D Co*, 445 Mich 153, 161-162; 516 NW2d 475 (1994).

On appeal, defendant concedes, as he did at the trial court, that plaintiff's injuries were objectively manifested and the injuries impaired an important body function. The only issue that remains is whether plaintiff's injuries affected her general ability to lead a normal life. MCL 500.3135(7). This issue is resolved as a matter of law if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries, but the dispute is not material to whether the plaintiff has suffered a serious

impairment of body function. MCL 500.3135(2)(a). Here, the nature and extent of plaintiff's injuries are well documented and we conclude that there is no material dispute over whether plaintiff has suffered a serious impairment of body function as that term has been defined by our Supreme Court in *Kreiner v Fischer*, 471 Mich 109, 130-134; 683 NW2d 611 (2004).

Kreiner instructs us that to determine whether an injury has resulted in a serious impairment of body function we must consider its effect on the course of a plaintiff's normal life which is further to be measured by whether the course or trajectory of the plaintiff's normal life has been affected. *Kreiner, supra* at 131. The *Kreiner* majority went on to hold:

In determining whether the course of 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 plaintiff's overall life. Once this is identified, the court must engage in an objective analysis regarding whether any difference between plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's "general ability" to conduct the course of his life. Merely "any effect" on the plaintiff's life is insufficient because a de minimis effect would not, as objectively viewed, affect the plaintiff's "general ability" to lead his life.

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. This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves. For example, that the duration of the impairment is short does not necessarily preclude a finding of a "serious impairment of body function." On the other hand, that the duration of the impairment is long does not necessarily mandate a finding of a "serious impairment of body function." Instead, in order to determine whether one has suffered a "serious impairment of body function," the totality of the circumstances must be considered, and 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." *Id.* at 132-134 (footnotes omitted).

Here, plaintiff, a very active student, suffered multiple, acute fractures of her right leg. She spent six to eight weeks in a cast, was not able to return to work and had to cancel an independent study course. She was forced to cancel a planned vacation. Even after her cast was removed her activities were limited: A film student, she was unable to carry around the required lighting and film equipment for her studies and her recreational activities, such as skateboarding, were limited.

We hold that plaintiff suffered a serious impairment of body function as a matter of law. While the duration of her impairment was relatively short – six to eight weeks – in that time she could not work, attend school, or engage in any of her usual recreational activities because she was in a hard cast and could not move about without crutches. Even after her cast was removed, her physical activities were limited. She was forced to cancel an independent study course which

she did was not able to complete until more than six months after the accident. She was forced to cancel a planned vacation. The activities the trial court focused on, to which plaintiff returned, did not resume until six months or more after her injuries. It is clear to us that plaintiff's impairment was significant and extensive.

We do not read *Kreiner* to require that plaintiffs must suffer serious impairment permanently in order to be entitled to meet the requirements of serious impairment of important body function. Indeed, *Kreiner* held that impairments of a short duration can be sufficient to meet the serious impairment threshold. *Id.* at 134. Under the totality of the circumstances in this case, including the seriousness and extent of the fractures, the nature and extent of treatment with casting and crutches, and the lifestyle alterations, all support a finding that plaintiff suffered a serious impairment of body function as a matter of law.

Reversed and remanded for entry of summary disposition for plaintiff. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Jessica R. Cooper

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ZAHRA, P.J., (*dissenting*).

I disagree with the majority's application and interpretation of *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). I conclude the trial court properly found that the injuries sustained by plaintiff did not affect the course or trajectory of her normal life. I would affirm.

Plaintiff identified three aspects of her life that were affected by her injury: (1) her education; (2) her employment; and (3) her recreational activities. The interruption to her normal life activities in these three areas was minimal and temporary. Plaintiff's education was only minimally interrupted, as her class load was reduced for only one semester and she received her associate's degree the following semester. Plaintiff did not return to her part time job after her accident. However, less than one month after the accident plaintiff commenced an internship in which she worked ten to fifteen hours a week. Further, no physician placed any restrictions on plaintiff's ability to work. Self-imposed restrictions do not establish an injury that affects one's ability to lead a normal life. *Kreiner, supra* at 133, n 17. Plaintiff maintains she can no longer engage in "impact" sports. However, plaintiff resumed skateboarding shortly after the accident and, significantly, plaintiff never asserted that participation in impact recreational activities was a significant part of her life.

The facts of this case are virtually indistinguishable from the facts in *Straub v Collette*, the companion case to *Kreiner*. *Kreiner, supra* at 134-136. There, the plaintiff sustained a broken bone in one finger, tendon injuries to two other fingers and open wounds to his hand. The plaintiff underwent surgery to repair his tendon injuries, wore a cast for approximately one month, and took pain medication and participated in physical therapy following the surgery. The plaintiff's injuries healed in approximately two months. However, plaintiff missed two to three months of work as a cable lineman. The plaintiff also missed four months of weekend work as a guitarist in a band. In addition, the plaintiff had difficulty performing household duties that he

traditionally performed. The Supreme Court concluded that the plaintiff in *Straub* had not sustained a serious impairment of a body function because plaintiff's injuries were "not extensive, recuperation was short, unremarkable, and virtually complete, and the effect of the injury on body function was not pervasive. . . ." *Id.* at 135-136. The same result is warranted in this case.

/s/ Brian K. Zahra