

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

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CESCILY SPIKES,

Plaintiff-Appellant,

v

JOSHUA SMITH and RIZZO ENVIRONMENTAL  
SERVICES,

Defendants-Appellees,

and

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

UNPUBLISHED

November 24, 2020

No. 346524

Wayne Circuit Court

LC No. 18-005806-NI

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Before: STEPHENS, P.J., and O’BRIEN and REDFORD, JJ.

PER CURIAM.

Plaintiff, Cescily Spikes, appeals by right the trial court’s order granting summary disposition for defendants, Joshua Smith, and his employer, Rizzo Environmental Services (RES) in this personal injury action that arose from a motor vehicle accident.<sup>1</sup> We affirm.

**I. FACTUAL BACKGROUND**

On August 5, 2016, Smith drove a garbage truck owned by RES into the Detroit bus on which plaintiff rode. The collision caused the bus to go off the roadway and collide with a large

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<sup>1</sup> On stipulation of the parties, the trial court dismissed with prejudice plaintiff’s claim against State Farm Mutual Insurance Company (State Farm) for underinsured motorist benefits and dismissed without prejudice her claims for uninsured motorist benefits. State Farm is not a party to this appeal.

sign for a nearby shopping center where it came to an abrupt stop which caused plaintiff to strike the bus seat in front of her with her chin, left shoulder, hands, and knees. Plaintiff exited the bus and walked to an ambulance and waited while the emergency medical responders assisted others. Plaintiff asked to be taken to the hospital where an emergency room physician examined her and discharged her to home. She walked from the hospital to a bus stop and took a bus home. Plaintiff sued defendants alleging that their negligence caused her to suffer a serious impairment of body function, permanent serious disfigurement, pain and suffering, mental and emotional trauma, and the loss of enjoyment of life. After conducting discovery, defendants moved for summary disposition on the ground that plaintiff could not meet the threshold injury requirement under MCL 500.3135 because she could not establish that, as a result of the accident, she suffered a serious impairment of a body function that affected her general ability to lead her normal life.

## II. STANDARD OF REVIEW

We review de novo the trial court's decision on a motion for summary disposition under MCR 2.116(C)(10). *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008), reh den 481 Mich 882 (2008). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and is reviewed "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.* When opposing a properly asserted and supported motion for summary disposition under MCR 2.116(C)(10), the nonmoving party cannot rely on mere allegations or denials in her pleadings to establish a question of fact. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Rather, the nonmoving party must present evidence that establishes a genuine issue of fact for trial. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). A genuine issue of material fact exists "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008) (citation omitted). In a negligence action arising out of an automobile accident, if there is no factual dispute as to the nature and extent of the plaintiff's injuries, MCL 500.3135(2)(a) directs the trial court to decide as a matter of law whether the plaintiff has suffered a serious impairment of a body function. *McCormick v Carrier*, 487 Mich 180, 192-194; 795 NW2d 517 (2010).

## III. ANALYSIS

Generally, the no-fault act abolished tort liability arising from the ownership, maintenance, or use of a motor vehicle. *Johnson v Recca*, 492 Mich 169, 175; 821 NW2d 520 (2012). "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).

Plaintiff argues that the trial court erred in three related ways, by ruling that she could not establish (1) that her injuries were proximately caused by the 2016 accident, (2) that she suffered a serious impairment of an important body function as required under MCL 500.3135(5), and (3) that the accident affected her general ability to lead her normal life. We disagree.

“To establish a prima facie case of negligence, a plaintiff must prove the following elements: (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant’s breach was a proximate cause of the plaintiff’s damages.” *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). “Liability for negligence does not attach unless the plaintiff establishes that the injury in question was proximately caused by the defendant’s actions.” *Helmus v Mich Dep’t of Transportation*, 238 Mich App 250, 255; 604 NW2d 793 (1999) (citation omitted).

To establish causation, a plaintiff must prove that the defendant’s conduct was both a cause in fact and a legal cause of her injuries. See *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). “The cause in fact element generally requires showing that ‘but for’ the defendant’s actions, the plaintiff’s injury would not have occurred.” *Skinner*, 445 Mich at 163. “[L]egal cause or ‘proximate cause’ normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.” *Id.* “While the issue of proximate cause is usually a factual question to be decided by the jury, the trial court may dismiss a claim for lack of proximate cause when there is no issue of material fact.” *Helmus*, 238 Mich App at 256 (citation omitted). A defendant takes the plaintiff as he finds her, including if she has a susceptibility to injury resulting from preexisting conditions. *Wilkinson*, 463 Mich at 396. Plaintiff bears the burden of setting forth specific facts that defendant caused plaintiff’s injuries—mere speculation is insufficient to support a finding of causation. *Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004); *Skinner*, 445 Mich at 173. That a condition temporally follows an event is not in itself evidence of causation. *West v Gen Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003).

“Proximate causation is a required element of a negligence claim.” *Patrick v Turkelson*, 322 Mich App 595; 616; 913 NW2d 369 (2018). “[A] court must find that the defendant’s negligence was a cause in fact of the plaintiff’s injuries before it can hold that the defendant’s negligence was the proximate or legal cause of those injuries.” *Id.* (quotation marks and citation omitted). “Establishing cause in fact requires the plaintiff to present substantial evidence from which a jury may conclude that more likely than not, but for the defendant’s conduct, the plaintiff’s injuries would not have occurred.” *Id.* at 617 (quotation marks and citation omitted). Cause in fact may be established by circumstantial evidence, but “[t]o be adequate, a plaintiff’s circumstantial proof must facilitate reasonable inferences of causation, not mere speculation.” *Skinner*, 445 Mich at 164. “[C]ausation theories that are mere possibilities or, at most, equally as probable as other theories do not justify denying defendant’s motion for summary judgment.” *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 282; 807 NW2d 407 (2011), quoting *Skinner*, 445 Mich at 172-173.

In this case, plaintiff failed to present specific factual evidence that established that defendants’ actions in fact caused plaintiff compensable injuries. Evidence established that, when Smith crashed RES’s truck into the bus causing the bus to strike the pole and abruptly stop, plaintiff’s body struck the seat in front of her causing her chin, left shoulder, hands and knees to impact the seat in front of her. The record reflects that plaintiff exited the bus and walked to the ambulance without problem. The emergency room records indicate that plaintiff presented with no acute, traumatic injury requiring treatment. At the hospital, she sat in a chair without distress, ambulated without difficulty, displayed normal knee flexion, and upon examination appeared normal without evidence of any significant contusions requiring treatment. The hospital’s

emergency records indicate that the treating physician diagnosed plaintiff with cervical strain and contusions of her knees. Plaintiff declined pain medication at the hospital but received a prescription for such medications. The record does not reflect that she ever filled the prescriptions. The record also does not reflect that the hospital physician ordered or recommended that plaintiff follow up with her primary care physician or any specialist. The hospital discharged plaintiff in stable condition. The record reflects that the accident served as the cause in fact of minor muscle strain, cervical strain, and knee contusions. After discharge, plaintiff walked to the bus stop and took a bus home.

The record also reflects that plaintiff suffered from numerous preexisting physical conditions. Although plaintiff claimed that the accident caused her numerous injuries, plaintiff's medical records reveal that before the 2016 accident she sought and received treatment from physicians who diagnosed and treated her for the same physical problems about which she complained after the accident. Plaintiff's medical records indicate that several doctors diagnosed plaintiff before the accident with degenerative disc disease of the cervical and lumbar spine, osteoarthritis of her spine, arthritis in both knees and both hands, arthritis of other joints, and carpal tunnel syndrome of both hands. Her medical records reflect that, before the accident, plaintiff complained of pain in her neck that radiated to her shoulders and arms, and she had pain in her back, knees, hands, and feet. Plaintiff's medical history before and after accident indicates that, after the accident, plaintiff complained of the same symptoms that she previously reported experiencing for around 10 years before the accident.

Further, the record reveals that during 2014 plaintiff applied for Social Security Disability benefits (SSD). The medical analysis performed by the Social Security Administration in relation to her application reveals that plaintiff had a history of the same alleged physical problems dating back many years before the accident. To the Social Security Administration in 2014, plaintiff reported that she suffered from debilitating painful conditions that significantly restricted her ability to carry on her ordinary life by limiting her ability to walk, recline on furniture, perform household chores, and do other daily activities. After the accident, plaintiff consulted first with a chiropractor and then with several medical doctors. She presented with the same physical complaints that she made to preaccident treating physicians and the Social Security Administration.

Some of plaintiff's postaccident treatment providers indicated that plaintiff's presenting conditions were causally linked to the 2016 accident. Plaintiff, however, admitted during her deposition that she did not inform postaccident treatment providers that she had preexisting conditions and had treated for the same pain complaints for years before the accident. The record reflects that plaintiff's postaccident treating physicians lacked knowledge of plaintiff's preexisting conditions. Consequently, they lacked the ability to and did not comparatively analyze plaintiff's conditions to determine the cause and origin of her presenting conditions.

While it is true that, "[r]egardless of the preexisting condition, recovery is allowed if the trauma caused by the accident triggered symptoms from that condition[.]" *Wilkinson*, 463 Mich at 395, in this case, evidence failed to establish that the injuries and pain plaintiff reported after the accident differed in location or degree from that which she previously experienced, had personally described to preaccident treating physicians, and for which she received treatment. Evidence does not indicate that the accident triggered new symptoms. The record evidence fails to establish that

plaintiff's pain and ailments actually arose from the 2016 bus accident caused by defendants' negligence.

Plaintiff did not introduce any affidavits or deposition testimony from any of her treating physicians. She also did not submit any expert opinion testimony to support her contention that the accident caused her some new distinct injuries or aggravated her preexisting conditions. The record lacks testimony from any medical professional that the accident in fact caused plaintiff's alleged injuries or aggravated her preexisting conditions.

Plaintiff's minor chin contusion and left shoulder pain appear to be unique injuries that arose from the 2016 accident. The record reflects that plaintiff only complained of her chin injury on the date of the accident, received no treatment for it at the hospital, and never sought treatment for it thereafter. Her left shoulder injury, however, continued and she had an MRI that confirmed that she had tendinitis. Her other reported injuries and pain complaints after the accident were not new, having been well-documented preexisting conditions both as to bodily location and the severity of the pain she experienced before the accident. Her complaints after the accident regarding those preexisting conditions do not appear to materially differ from her preaccident descriptions of pain and discomfort in exactly the same locations, and the manner in which those conditions affected her life.

Other than her chin and left shoulder injuries, plaintiff failed to present evidence that defendants' actions were a cause in fact of her injuries or a cause in fact of aggravation of her preexisting conditions. The record reflects that plaintiff failed to establish a logical sequence of cause and effect to support her contention that some new and different symptoms arose or that her preexisting conditions were aggravated by the 2016 accident. Plaintiff failed to establish that, but for the 2016 accident, she would not have had the injuries about which she complained. Because plaintiff did not establish that defendants' actions were a cause in fact of her claimed injuries, she could not demonstrate how defendants' actions were the proximate or legal cause of those injuries requiring defendants to compensate her for them. See *Craig*, 471 Mich at 87 (“[This Court] must find that the defendant’s negligence was a cause in fact of the plaintiff’s injuries before it can hold that the defendant’s negligence was the proximate or legal cause of those injuries.”). Plaintiff, therefore, failed to establish a genuine issue of material fact that defendants' conduct caused her any injuries other than to her chin and left shoulder.

The trial court could properly granted defendants' motion for summary disposition respecting her allegations that defendants caused or aggravated her degenerative disc disease of the cervical and lumbar spine, arthritis in her knees and joints, pain in her neck, back, knees, hands, and feet. Plaintiff failed to present evidence that defendants' conduct served as a cause in fact of her complained conditions to differentiate them from her preexisting conditions, or served as a cause in fact of aggravation of such preexisting conditions. Other than plaintiff's complaint of minor chin and left shoulder pain arising from acute trauma related to the 2016 accident, considering all of the evidence in a light most favorable to plaintiff, the evidence did not establish other acute traumatic injury traceable to the 2016 accident or any particular aggravation of preexisting conditions attributable to the accident. Accordingly, the trial court did not err by granting defendants summary disposition. Respecting the injuries to her chin and left shoulder which appear to be distinctly attributable to the accident, to be entitled to recovery, plaintiff had

to establish that she suffered an objectively manifested impairment of an important body function that affected her general ability to lead a normal life as required under MCL 500.3135.

Under MCL 500.3135(1), a motor vehicle operator is subject to tort liability for noneconomic loss when “the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement.” A “serious impairment of body function” is defined under MCL 500.3135(5) as:

an impairment that satisfies all of the following requirements:

(a) It is objectively manifested, meaning it is observable or perceivable from actual symptoms or conditions by someone other than the injured person.

(b) It is an impairment of an important body function, which is a body function of great value, significance, or consequence to the injured person.

(c) It affects the injured person’s general ability to lead his or her normal life, meaning it has had an influence on some of the person’s capacity to live in his or her normal manner of living. Although temporal considerations may be relevant, there is no temporal requirement for how long an impairment must last. This examination is inherently fact and circumstance specific to each injured person, must be conducted on a case-by-case basis, and requires comparison of the injured person’s life before and after the incident.

The test for establishing a serious impairment of body function requires showing “(1) an objectively manifested impairment (2) of an important body function that (3) affects the person’s general ability to lead his or her normal life.” *McCormick*, 487 Mich at 195. In *McCormick*, our Supreme Court specified that a plaintiff “must introduce evidence establishing that there is a physical basis for their subjective complaints of pain and suffering.” *Id.* at 198, (quotation marks and citation omitted).

In *Patrick*, 322 Mich App at 606-608 (quotation marks and citation omitted), this Court clarified the *McCormick* test as follows:

First, an objectively manifested impairment is one that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function. The inquiry focuses on whether the impairment is objectively manifested, not the injury or its symptoms. The term “impairment” means “the state of being impaired.” In turn, “impaired” means the state of (1) being weakened, diminished, or damaged or (2) functioning poorly or inadequately. Although mere subjective complaints of pain and suffering are insufficient to show impairment, evidence of a physical basis for that pain and suffering may be introduced to show that the impairment is objectively manifested. Medical testimony is generally, but not always, required to make this showing.

Second, the important-body-function inquiry is an inherently subjective one. The focus is on whether the body function has great value, significant, or

consequence, and the relationship of that function to the individual's life must be considered.

Third, the impairment to an important body function affects a person's general ability to lead a normal life if it has an influence on some of the person's capacity to live in his or her normal manner of living. This is also a subjective inquiry. The statute does not require the person's ability to lead a normal life to have been destroyed or for the impairment to last a certain period of time. Instead, the statute only requires that the impairment affect the person's ability to live in his or her normal manner of living. The focus is not on whether a person's normal manner of living itself has been affected, and there is no quantitative minimum as to the percentage of a person's normal manner of living that must be affected.

However, the issue of whether a serious impairment of body function has been incurred is a question of law to be decided by the court only if (1) "[t]here is no factual dispute concerning the nature and extent of the person's injuries" or (2) "[t]here is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination whether the person has suffered a serious impairment of body function . . . ." MCL 500.3135(2)(a). Accordingly, in *McCormick*, 487 Mich at 215, our Supreme Court instructed courts applying MCL 500.3135 to begin by determining whether there is a factual dispute regarding the nature and the extent of the person's injuries and, if so, whether the dispute is material to determining whether the serious impairment of body function threshold is met. When there is a genuine issue of material fact regarding the nature and extent of a person's injuries, the threshold question of whether there was a serious impairment of body function is for the jury and may not be decided as a matter of law.

In this case, plaintiff's medical records reveal that she had actual symptoms and conditions that her treating physicians reported that they observed before and after the accident. Before the accident, plaintiff's treating physicians and the Social Security Administration's investigator found, based on x-rays taken in 2011 and physical examinations, that plaintiff suffered from degenerative conditions of her cervical and lumbar spine, osteoarthritic conditions in her spine, osteoarthritic conditions in her bilateral knees, and chronic conditions of her hands and feet, all of which historically caused her extensive ongoing pain in the locations of those chronic conditions. Because of those conditions, she complained that the pain radiated to other parts of her body. Plaintiff's preaccident medical records indicate that plaintiff's treating physicians considered plaintiff "impaired," i.e., she had weakened or diminished conditions affecting various physical locations. In her 2014 application to the Social Security Administration, plaintiff reported conditions that seriously impacted her general ability to lead her normal life. The Social Security Administration initially noted in relation to plaintiff's 2014 application that objective medical evidence confirmed that she had medically determined impairments of arthritis and degenerative disc disease in the cervical spine. When she appealed in April 2016, the Social Security Administration found that plaintiff had severe impairments which caused her limitations in her ability to perform work-related activities including cervical and lumbar degenerative disc disease, chondromalacia of the patellar regions of her bilateral knees, and obesity. The Social Security

Administration's appeal decision reported that plaintiff had been under a disability as defined in the Social Security Act since April 17, 2016.

In 2015, one of plaintiff's treating physicians reported that plaintiff complained of suffering from neck, arm, finger and foot pain for the previous four or five years. He performed nerve conduction studies and diagnosed plaintiff with osteoarthritis of the neck and cervical spondylosis. Another doctor in 2015 diagnosed plaintiff with lumbar and cervical spondylosis, and cervicgia because she presented with hand and neck pain radiating to bilateral shoulders. Another treating physician reported that plaintiff had a history of cervical spondylosis and arthritis that caused musculoskeletal pain in her joints. Based on x-rays, that doctor diagnosed osteoarthritis. During July 2016, another doctor treated plaintiff for musculoskeletal pain in multiple joints. Plaintiff told him that she suffered from pain in her feet, knees, hands, and neck for the past 15 years. Plaintiff's primary care physician also diagnosed and treated plaintiff before the accident for degenerative osteoarthritis, radiculopathy of her spine, and degenerative osteoarthritis of her bilateral knees. She found that plaintiff experienced numbness and tingling in her bilateral upper extremities.

The doctors who treated plaintiff following the accident concluded that plaintiff suffered from chronic degenerative disc disease. The MRI's taken after the accident of her cervical and lumbar spine supported that diagnosis. Respecting plaintiff's left shoulder, the MRI conducted on October 20, 2016, indicated that plaintiff had tendinitis.

All of the documented conditions indicate that plaintiff suffered from objectively manifested impairments evidenced by actual symptoms or conditions that plaintiff's treating physicians, persons other than plaintiff, observed or perceived as impairing various body functions of plaintiff. Evidence indicated that plaintiff suffered from objectively manifested impairments of her cervical and lumbar spine, both knees, feet, and hands. These maladies, however, were all diagnosed and treated before the accident. Plaintiff's medical record do not indicate that plaintiff's cervical and lumbar spine, knees, feet, or hand conditions arose from the 2016 accident. The evidence also does not establish that these preexisting conditions were necessarily aggravated by the 2016 accident. Plaintiff complained about the same conditions to various physicians and sought treatment for them for approximately 10 years before the accident. Moreover, plaintiff's complaints regarding her conditions do not appear to have perceptively changed following the accident.

Before the accident, MRI studies had not been performed. X-rays, however, indicated that plaintiff had chronic degenerative disc disease of her cervical and lumbar spine. After the accident, MRI studies of plaintiff's cervical and lumbar spine indicated chronic conditions that were not traceable to an acute traumatic origin. Medical records do not establish that plaintiff's spine conditions were caused by the 2016 accident. Nor do the MRIs and medical records establish that her spine conditions were aggravated by the accident. Similarly, plaintiff's chronic knee and hand conditions were documented before the accident and no record establishes that plaintiff suffered acute traumatic injury as a result of the accident or that those preexisting conditions were aggravated by it. Consequently, although plaintiff suffered from objectively manifested impairments evidenced by actual symptoms or conditions that plaintiff's treating physicians diagnosed, the conditions were not traceable to the 2016 accident. Evidence also did not establish

that the accident exacerbated or aggravated plaintiff's preexisting conditions. Accordingly, the trial court did not err by ruling that plaintiff failed to satisfy the first prong of the *McCormick* test.

Plaintiff's left shoulder condition, however, appears to have arisen from the 2016 accident. No preaccident medical records were presented by the parties to the trial court that indicate that plaintiff specifically complained of the problem she experienced with her left shoulder after the accident. Further, no treating physician appears to have diagnosed or treated her shoulder tendinitis condition before the accident.

Plaintiff argues that the trial court found no objectively manifested impairments. That contention, however, is not supported by the record. The record reflects that the trial court considered the evidence and applied the *McCormick* test. The trial court did not fully articulate its objectively manifested impairment analysis, but the record indicates that the trial court recognized that plaintiff had objectively manifested impairments. The trial court, however, predominantly focused on when those impairments originated and the degree of their manifestations before the accident in comparison with her postaccident conditions.

The trial court explained that the evidence showed that, after the accident, nothing really changed in relation to her preexisting objectively manifested conditions. It concluded that her preexisting conditions which served as the bases for her obtaining SSD benefits before the accident failed to differ from her conditions after the accident. The trial court also concluded that the evidence did not establish that the accident triggered any aggravation of her preexisting conditions. The trial court found that nothing appeared other than that which already existed before the 2016 accident. With the exception of plaintiff's left shoulder injury, the record evidence supports the trial court's conclusion. To the extent that the trial court's decision implies that plaintiff failed to establish any objectively manifested impairments related to the 2016 accident, the trial court erred because plaintiff established with evidence that she suffered from an objectively manifested impairment of her left shoulder which was not a preexisting impairment.

Respecting plaintiff's shoulder, the trial court should have considered the second step articulated in *Patrick*, i.e., the relative value, significance, and consequence of the impaired body function to plaintiff's life. The trial court failed to discern that plaintiff established an objectively manifested impairment of her left shoulder distinct and separate from her other preexisting conditions that were objectively manifested impairments. Regardless, plaintiff remained obligated to demonstrate that her claimed objectively manifested impairments arose from the 2016 accident and seriously affected her general ability to lead her normal life. Plaintiff argues that the trial court erred by concluding that she failed to do so. The trial court, however, did not err in this regard. Even viewing the evidence in a light most favorable to plaintiff, plaintiff failed to establish the existence of a genuine issue of material fact regarding the nature and extent of her preexisting conditions which did not appreciably differ from her postaccident complaints of pain in those same bodily locations. Further, no genuine issue of material fact exists regarding the cause, origin, or extent to plaintiff's left shoulder injury. The record reflects that she had tendinitis, but the record does not indicate that this objectively manifested injury affected plaintiff's general ability to lead her normal life.

“[T]he impairment to an important body function affects a person's general ability to lead a normal life if it has ‘an influence on some of the person's capacity to live in his or her normal

manner of living.’ ” *Patrick*, 322 Mich App at 607, quoting *McCormick*, 487 Mich at 202. “[T]he extent to which a person’s general ability to live his or her normal life is affected by an impairment is undoubtedly related to what the person’s normal manner of living is.” *McCormick*, 487 Mich. at 202-203. In other words, the inquiry is subjective. *Patrick*, 322 Mich App at 607. To show that the impaired person’s ability to lead his or her normal life has been affected, a comparison is made between his or her life before and after the injury. *Nelson v Dubose*, 291 Mich App 496, 499; 806 NW2d 333 (2011). “[T]he statute merely requires that a person’s general ability to lead his or her normal life has been affected, not destroyed.” *McCormick*, 487 Mich at 202. Therefore, “courts should consider not only whether the impairment has led the person to completely cease a pre-incident activity or lifestyle element, but also whether, although a person is able to lead his or her pre-incident normal life, the person’s general ability to do so was nonetheless affected.” *Id.* Additionally, “the statute only requires that some of the person’s ability to live in his or her normal manner of living has been affected, not that some of the person’s normal manner of living has itself been affected.” *Id.* Lastly, as the Court explained in *McCormick*, “[w]hile the Legislature required that a ‘serious disfigurement’ be ‘permanent,’ it did not impose the same restriction on a ‘serious impairment of body function.’ ” *Id.* at 203, quoting MCL 500.3135(1). Thus, there is no “express temporal requirement as to how long an impairment must last in order to have an effect on the person’s general ability to live his or her normal life.” *Id.*

In this case, plaintiff argued that the accident caused her injuries that affected her ability to do household chores, walk long distances, take her bike from her basement to ride it, and that her injuries caused her pain that limited her ability to engage in her normal life activities. The record, however, does not support plaintiff’s postaccident claim. Defendants submitted evidence including plaintiff’s preaccident medical records, plaintiff’s 2014 SSD benefits application and appeal documents, and surveillance reports with supporting video and still photographs that were uncontroverted by plaintiff. The record reflects that during 2014 plaintiff described in her application for SSD benefits that she led a very restricted life because of her various maladies. She claimed that she could not do household chores, could not sit or recline for long periods, could not walk long distances, could not lift more than two pounds, and that she suffered from serious physical disabilities establishing her need and entitlement to disability benefits. For her appeal of the Social Security Administration’s denial of her original application, plaintiff reiterated similar self-described serious limitations sufficiently to obtain the grant of disabled status warranting receipt of SSD benefits. During her deposition, plaintiff described the same or similar limitations that she claimed affected her general ability to lead her normal life, but she attributed those limitations to the 2016 accident despite having experienced the same before the accident. Her SSD benefits application and her historic medical records contradicted her cause and origin theory of her maladies and contradicted her postaccident claim that the accident affected her general ability to lead her normal life. Plaintiff’s preaccident description of her life limitations compared with her postaccident description of the same indicates that the 2016 accident did not affect her preaccident normal life.

Further, the uncontroverted surveillance reports and video and photographic evidence demonstrated that plaintiff did not appear to suffer from impairments that affected her general ability to lead her normal life. Plaintiff walked extensive distances, crossed roads quickly to avoid traffic, entered and exited buses to transport her to appointments and to shopping. The evidence established that plaintiff carried packages, her purse, and an umbrella without difficulty while walking for extended periods. Plaintiff’s contentions to the contrary were unsupported by

evidence. Plaintiff failed to present evidence that created a genuine issue of material fact in this regard. The evidence failed to support plaintiff's claim that she suffered serious impairments from the 2016 accident that had an influence on some of her capacity to live in her normal manner of living or affected her general ability to live her normal life. Even considering the evidence in a light most favorable to plaintiff, plaintiff failed to satisfy the *McCormick* test. The trial court, therefore, did not err by granting defendants summary disposition.

Although the evidence established that plaintiff suffered from objectively manifested impairments, the majority of such impairments were not attributable to the 2016 accident because they were preexisting conditions and the evidence did not establish that plaintiff suffered an aggravation of those preexisting conditions because of the accident. Related to the 2016 accident, the evidence established that plaintiff suffered from an objectively manifested impairment of her left shoulder. However, plaintiff failed to establish that her alleged impairments affected her general ability to lead her normal life or that they influenced some of her capacity to live in her normal manner of living. Accordingly, the trial court did not err by granting defendants summary disposition.

Affirmed.

/s/ Colleen A. O'Brien

/s/ James Robert Redford