

STATE OF MICHIGAN
COURT OF APPEALS

JAMES C. SHIVELY, SR. and MARY SHIVELY,

Plaintiffs-Appellants,

v

NIKOLAOS BOGIAS,

Defendant-Appellee.

UNPUBLISHED
November 26, 2002

No. 237052
Oakland Circuit Court
LC No. 00-022869-NI

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition in this no-fault action. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff James Shively was injured in an automobile accident after defendant ran a red light. He and his wife brought this third party action under the no-fault act seeking to recover from defendant for noneconomic loss. Plaintiff asserted that his neck injury constituted a serious impairment of a body function. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10), finding as a matter of law that plaintiff failed to establish that the impairment affected his general ability to lead his normal life.

Under MCL 500.3135 a person remains subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. The issue of whether an injured person has suffered serious impairment of body function is a question of law if there is no factual dispute concerning the nature and extent of the person's injuries, or if there is a dispute that is not material to the determination. MCL 500.3135(2)(a). Under limited circumstances, a jury will resolve material or outcome-determinative factual disputes, and in so doing, determine whether a plaintiff suffered a serious impairment of body function. *Kreiner v Fischer*, 251 Mich App 513, 515; 651 NW2d 433 (2002).

In determining whether a plaintiff has suffered a serious impairment of body function, the court must consider the nature and extent of the injuries. *May v Sommerfield*, 239 Mich App 197, 202-203; 607 NW2d 422 (1999). The court is required to make appropriate findings whether the plaintiff has an objectively manifested injury, whether an important body function is

impaired, and whether that impairment affects the plaintiff's general ability to lead his or her normal life. *Id.*

A court should compare plaintiff's lifestyle before and after the accident in determining whether a factual dispute exists with respect to the extent of plaintiff's injuries. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000). A plaintiff must show that his general ability to lead his normal life has been significantly altered by his injury. *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001). Where a person's normal life consists in large part of his work, an injury's impact on his work routine may establish that the impairment affects the person's general ability to lead his normal life. *Kreiner, supra*, 519 n 6.

In *Kreiner*, the plaintiff's impairment caused him to alter his normal work routine. He could only work six hours a day instead of his usual eight. He could no longer do roofing work and his ladder work was limited to twenty minutes at a time. He could not lift more than eighty pounds, and he could walk no more than a half mile. The Court found that the trial court erred in granting the defendant's motion for summary disposition.

Here, the evidence showed that plaintiff has a mildly herniated disc in his neck. Plaintiff testified that he had no hobbies, and he could not work for several periods. Right after the accident he did not work from November 16, 1997 to December 29, 1997. He returned to work for slightly over a month, and then he was off from February 3, 1998 to March 18, 1998. He worked until February 1999, then was off work until October 1999 when he started work with a new employer. The accident significantly affected plaintiff's work life.

Following *Kreiner, supra*, plaintiff's inability to perform the primary function in his life raises a question whether the impairment has affected plaintiff's general ability to lead a normal life. The trial court erred in granting defendant's motion for summary disposition.

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

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski