

STATE OF MICHIGAN  
COURT OF APPEALS

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ZEBEDEE LOVE, II,

Plaintiff-Appellant,

v

KEITH ALAN STURM and LINCARE, INC.,  
d/b/a LINCARE HOLDINGS,

Defendants-Appellees.

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UNPUBLISHED  
February 17, 2005

No. 251444  
Saginaw Circuit Court  
LC No. 02-042358-NI

Before: Fort Hood, P.J. and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiff in this no-fault action appeals as of right from the September 19, 2003 order granting defendants' motion for summary disposition. Because plaintiff has not created a justiciable question of fact on how any or all of his injuries have affected his general ability to lead his normal life, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action for noneconomic damages under the no-fault insurance act, MCL 500.3101 *et seq.*, asserting that knee and lower back injuries incurred during an automobile accident constituted a serious impairment of body function. The trial court found that plaintiff had failed to present sufficient evidence that the injuries affected his general ability to lead his normal life, and granted summary disposition to defendants. We review *de novo* the trial court's grant of summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

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. As used in this section, "serious impairment of body function" is defined as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7).

Using the analysis of the recent Michigan Supreme Court decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), we affirm the trial court's decision. Although the trial court's decision predates *Kreiner*, the trial court's review and conclusion is consistent with *Kreiner*'s holdings. Under *Kreiner*, this Court must first determine whether a factual dispute

exists “concerning the nature and extent of the person’s injuries; or if there is a factual dispute, that it is not material to the determination whether the person has suffered a serious impairment of body function.” *Id.* at 131-132. If there are material factual disputes, courts may not decide the issue as a matter of law. But if there are no material questions of fact regarding the nature and extent of plaintiff’s injuries, this question is one of law. *Id.* at 132.

Where courts decide the issue as a matter of law, they must then go on to the second step in the analysis and determine whether “an ‘important body function’ of the plaintiff has been impaired.” *Id.* at 132. Where a court finds an objectively manifested impairment of an important bodily function, “it then must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Id.* at 132. This involves an examination of the plaintiff’s life before and after the accident. The Court should objectively determine whether any change in lifestyle “has actually affected the plaintiff’s ‘general ability’ to conduct the course of his life.” *Id.* at 132. “Merely ‘any effect’ on the plaintiff’s life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff’s ‘general ability’ to lead his life.” *Id.* at 133. The *Kreiner* Court provided the following non-exclusive list of objective factors that may be used in making this determination:

- (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.]

Specifically in regard to residual impairments, the Court noted, “[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point.” *Id.* at 133 n 17.

In the instant case, there is no material question of fact regarding the extent of plaintiff’s injuries. Instead, as defendants point out, plaintiff has presented nothing from which to conclude that the injuries have affected his general ability to lead his normal life. Consequently, the trial court properly decided this issue as a matter of law. *Id.* at 132.

Viewing the evidence in the light most favorable to plaintiff as the nonmoving party, there was minimal objective medical evidence showing that plaintiff suffered injuries to his spine and knee from the accident. Arguably, these injuries may have affected several important body functions. However, plaintiff has failed to show that the injuries have affected his general ability to lead his normal life. Plaintiff’s initial injuries were not as serious as those suffered by the plaintiffs in *Kreiner*, whose injuries were found not to have met the threshold requirement. Nor does plaintiff continue to suffer even the modest continuing effects suffered by the *Kreiner* plaintiffs. *Id.* at 134-137. At most, plaintiff has presented evidence of continued back pain that requires pain medication to control.

Also, as noted by the trial court, plaintiff has provided no indication of how any or all of his injuries have affected his general ability to lead his normal life. Plaintiff presents no showing of what a “normal life” for him actually was before the date of the accident or how it has been changed, if it has changed, since the accident. Plaintiff was unemployed before the accident and remains incarcerated and unemployed. He does not complain of sleep problems, range of motion restrictions, or other secondary effects from the pain. Plaintiff has thus failed to meet his burden of opposing defendants’ motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109,

121; 597 NW2d 817 (1999). The trial court properly ruled that defendants were entitled to summary disposition.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Richard Allen Griffin  
/s/ Pat M. Donofrio