

STATE OF MICHIGAN
COURT OF APPEALS

PETER KARACHY,

Plaintiff-Appellant,

v

TUAN BUU LY,

Defendant-Appellee.

UNPUBLISHED

June 21, 2005

No. 261332

Ottawa Circuit Court

LC No. 04-049062-NI

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 20, 2003, plaintiff was injured in a motorcycle accident when defendant failed to yield the right-of-way and turned in front of him. As a result of the accident, plaintiff suffered an avulsion fracture of his right tibia (shin bone), and a “first-degree” dislocated shoulder. He underwent arthroscopic surgery on his knee on November 25, 2003. Plaintiff’s leg was placed in a cast until January 8, 2004. Plaintiff also wore a sling for his shoulder injury for approximately six weeks. He was wheelchair-bound for that period because his shoulder injury prevented him from using crutches. After his cast was removed in January, plaintiff used crutches for approximately one week and then was allowed to use a cane. Plaintiff underwent physical therapy, and according to his physician’s notes, had fully recovered by his last appointment on March 4, 2004.

Plaintiff was a construction worker before the accident, but after the accident he did not work for fourteen weeks. However, the notes from plaintiff’s doctor visit on March 4, 2004 do not mention work restrictions. It is difficult to determine whether plaintiff’s lingering unemployment was due solely to the accident. Plaintiff never returned to his previous position, and instead began a motorcycle customizing business in July 2004. Plaintiff had planned to switch careers before the accident occurred.

As of the date of plaintiff’s deposition, he had resumed riding motorcycles, and worked sixty to sixty-five hours per week. He maintained that pushing motorcycles up his shop ramp was sometimes difficult. He also maintained that his knee continued to “crack” and sometimes

“buckled” on him, and stated that he could not run well or kick a soccer ball. Plaintiff could no longer dive because he could not jump on the diving board.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted the motion, finding that plaintiff was unable to show that his injuries affected his general ability to lead his normal life pursuant to MCL 500.3135 as that phrase was interpreted in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).

We review a trial court’s decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Pursuant to MCL 500.3135, a person is 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).

In *Kreiner*, *supra* at 130-134, our Supreme Court provided a framework for determining whether a plaintiff meets the serious impairment threshold. First, a court is to 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, a court may not decide the issue as a matter of law. But if no material question of fact exists regarding the nature and extent of the plaintiff’s injuries, this question is one of law. *Id.* at 132.

When a court decides the issue as a matter of law, it must then proceed to the second step in the analysis and determine whether “an ‘important body function’ of the plaintiff has been impaired.” *Id.* When a court finds an objectively manifested impairment of an important body function, “it then must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Id.* 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 132-133. “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 a non-exclusive list of objective factors that may be used in making this determination. These factors include:

(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.*

In the instant case, the trial court did not err by granting defendant’s motion for summary disposition because plaintiff has failed to show that these injuries coupled with any residual effects affected a significant change in his normal life. *Kreiner*, *supra* at 135-137. In addition, any limitations on recreational activity also appear to be self-imposed by plaintiff. Self-imposed restrictions cannot establish an injury that affects one’s ability to lead a normal life. *Kreiner*, *supra* at 133 n 17.

While we find this to be a close case, under the standard established in *Kreiner, supra*, by which we are bound, we hold that plaintiff has not satisfied the “serious impairment of body function” threshold for the recovery of non-economic damages set forth in MCL 500.3135.

Affirmed.

/s/ Peter D. O’Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello