

STATE OF MICHIGAN
COURT OF APPEALS

ANDREW BLANE FIELDS and SUSIE FIELDS,

Plaintiffs-Appellants,

v

DIANA KAY MCCARTER and OLIVER
THOMAS MCCARTER,

Defendants-Appellees.

UNPUBLISHED

August 4, 2005

No. 253020

Washtenaw Circuit Court

LC No. 00-001108-NI

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

This appeal comes to us on remand from our Supreme Court for consideration as on leave granted. Plaintiffs moved for a new trial in the trial court on the ground that the trial court erroneously granted defendants' motion for a directed verdict. The trial court denied the motion and upheld its grant of a directed verdict. Our review of the record reveals that the trial court correctly granted defendants' motion for directed verdict because plaintiffs did not satisfy the "serious impairment of body function" threshold for recovery of noneconomic damages under MCL 500.3135(1). Therefore, the trial court did not abuse its discretion in denying plaintiffs' motion for a new trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision to grant or deny a motion for a new trial under MCR 2.611 for an abuse of discretion. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 761; 685 NW2d 391 (2004). "An abuse of discretion exists where an unprejudiced person, considering the facts on which the trial court made its decision, would conclude that there was no justification for the ruling made." *Szymanski v Brown*, 221 Mich App 423, 431; 562 NW2d 212 (1997).

On November 6, 1998, plaintiff Andrew Fields was involved in a motor vehicle accident. He testified that defendant Diana McCarter "darted out" in front of him. To avoid hitting her vehicle, he had to lay his motorcycle down on the ground. He suffered a chipped elbow, bruised ribs, and injuries to his left foot big toe.¹

¹ Plaintiff Susie Fields, the wife of plaintiff Andrew Fields, asserts a claim for loss of
(continued...)

Plaintiffs argue that Andrew Fields' injuries resulted in a serious impairment of body function. MCL 500.3135(1) provides: "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(7) defines "serious impairment of body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life."

After plaintiffs filed this appeal, our Supreme Court issued its decision in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004). The Court in *Kreiner* ruled that a plaintiff suffers a "serious impairment of body function" when he is no longer "'generally able' to lead his normal life." *Id.* at 130-131. *Kreiner* provided lower courts with a three-step test to determine whether a plaintiff has suffered a "serious impairment of body function" for purposes of MCL 500.3135. "First, a court must determine that there is no factual dispute 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. Second, the court "must next determine if an 'important body function' of the plaintiff has been impaired." *Id.* at 132. "If a court finds that an important body function has in fact been impaired, it must then determine if the impairment is objectively manifested." *Id.* An impairment is objectively manifested if it is medically documented. *Id.* Third, "[i]f a court finds that an important body function has been impaired, and that the impairment is objectively manifested, it then must determine if the impairment affects the plaintiff's general ability to lead his or her normal life." *Id.*

Our review of the evidence offered at trial by plaintiffs reveals that they failed to show that Andrew Fields' general ability to lead his normal life was affected by his injuries. Fields suffered bruised ribs, a chipped elbow, and an injured left big toe. Fields saw an osteopathic physician within two weeks. His elbow stopped hurting within two weeks of the accident. Further, it took four to five weeks for Fields' ribs to heal. During this period, plaintiffs' marital relations were diminished, and Fields could not perform certain household tasks, such as putting the salt into the water softener, taking out the trash, or shoveling the snow. After his ribs healed, he resumed these household tasks. Although Fields' toe took longer to heal than his ribs or elbow, he missed only one day of work following the accident. While he performed his work tasks more slowly, he was able to perform them nonetheless. By spring 1999 he was able to ride his motorcycle again.

The record evidence fails to demonstrate that Fields' injuries affected his ability to live a normal life. Accordingly, plaintiffs failed to establish that Fields suffered a serious impairment of body function that would entitle them to recovery under MCL 500.3135(1). The trial court correctly granted defendants' motion for a directed verdict, *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003), and did not abuse its discretion in denying plaintiffs' motion for a new trial on that basis.

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consortium. Defendant Oliver McCarter is the husband of defendant Diana McCarter and the owner of the vehicle driven by her at the time of the accident.

We affirm.

/s/ Stephen L. Borrello

/s/ Richard A. Bandstra

/s/ Kirsten Frank Kelly