

STATE OF MICHIGAN
COURT OF APPEALS

ABDULWHAHB SALEM,

Plaintiff-Appellant,

v

CHAD M. TROJANEK and
TSO CATERING, INC.,

Defendants-Appellees.

UNPUBLISHED

August 25, 2005

No. 252702

Kent Circuit Court

LC No. 03-000256-NI

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant in this third-party automobile negligence case. We affirm.

On March 23, 2000, at approximately 6:20 p.m., plaintiff was driving his vehicle when a vehicle owned by TSO Catering, Inc., and being driven by TSO Catering employee Chad M. Trojanek, negligently entered plaintiff's lane of traffic and collided with plaintiff's vehicle. Plaintiff's knee was injured as a result of the collision. Plaintiff sought medical treatment later that day and was informed that he had sustained a fracture of the inferior left patella. Plaintiff was placed on full work restriction, prescribed pain medication, and referred to an orthopedic specialist.

On March 28, 2000, plaintiff first met with orthopedic specialist Dr. William Schwab. Plaintiff subsequently saw Dr. Schwab for treatment and physical therapy on four additional occasions. On July 11, 2000, Dr. Schwab noted that rehabilitation of plaintiff's knee was complete and that plaintiff could return to work, having regained a full range of motion. Despite this prognosis, plaintiff asserts that continuous pain and limited use of his left knee persisted after the last treatment by Dr. Schwab. Plaintiff asserts that his abilities to ambulate and to engage in recreational activities continue to be restricted by the knee injury.

On January 7, 2003, plaintiff brought this action under the no-fault act asserting that the knee injury constituted a serious impairment of body function. Defendants filed a motion for summary disposition on the grounds that plaintiff's injury was not severe enough to meet the "serious impairment of body function" threshold required by MCL 500.3135. Plaintiff contended that he had demonstrated the existence of a serious impairment of body function, or at

least a genuine factual dispute regarding the existence of such a condition, and that the issue should be submitted to a jury.

The trial court determined that although plaintiff had sustained impairment of an important body function, namely ambulation, it was not a “serious impairment,” defined at MCL 500.3135(7) as an impairment “that affects the person’s general ability to lead his or her normal life.” Thus, the trial court granted defendants’ motion for summary disposition under MCR 2.116(C)(10). This appeal followed.

This Court reviews de novo the grant or denial of a motion for summary disposition. *American Federation of State, Co & Municipal Employees v Detroit*, 468 Mich 388, 398; 662 NW2d 695 (2003); *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), this Court must review the record evidence and all reasonable inferences drawn from that evidence in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists. *Trepanier v Nat’l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).

The recent Michigan Supreme Court case of *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004) governs the issues presented in this case. This decision interpreted MCL 500.3135 and clarified the process for determining whether a plaintiff’s injuries satisfy the no-fault threshold. Although *Kreiner* was not released until after the filing of this appeal, the process followed by the learned trial judge in this matter closely followed the steps laid out by our Supreme Court in *Kreiner, supra*.

Under MCL 500.3135, a trial court must first determine if there is a material factual dispute concerning the nature and extent of a plaintiff’s injuries. *Kreiner, supra* at 131-132. This process involves determining whether the type of injury sustained by the plaintiff is in dispute, and if so, whether that dispute is material to establishing whether the injuries are a serious impairment of body function. *Id.* at 132. If there is no dispute as to the extent of a plaintiff’s injuries, or if a dispute exists but is not material to the “serious impairment” determination, the trial court should decide as a matter of law whether the plaintiff’s injuries are sufficient to satisfy the no-fault threshold. *Id.*

In this case, both parties have consistently agreed that the only injury sustained by plaintiff was a fracture of the inferior left patella. Thus, there is no factual dispute concerning the extent or nature of plaintiff’s injuries, and the trial court was correct to proceed to the next step of the inquiry: determining as a matter of law whether plaintiff’s injury constituted a serious impairment of body function.

This next step in resolving whether a plaintiff’s injuries satisfy the no-fault threshold is composed of two separate determinations, both matters of law decided by the trial court. *Kreiner, supra* at 132. The court must determine if a plaintiff has sustained an objectively manifested impairment of an important body function. *Id.* Here, the trial court concluded that plaintiff had sustained an impairment of an important body function, namely ambulation. Moreover, objective manifestation of the impairment was made clear in the reports of Dr. Schwab and x-rays of plaintiff’s knee conducted on the day of the accident at Spectrum Health Center Outpatient Facility.

Where a court finds that a plaintiff has sustained an objectively manifested impairment to an important body function, it must then determine if the impairment “affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7); *Kreiner, supra*. In making that determination, courts should compare a plaintiff’s life before and after the injury to determine whether any differences have truly impacted the post-accident lifestyle. *Id.* at 132. “Merely ‘any effect’ on the plaintiff’s life would not, as objectively viewed, affect the plaintiff’s ‘general ability’ to lead his life.” *Id.* at 133 (quotations and emphasis in original).

Both the plaintiffs discussed in *Kreiner*,¹ were found to have sustained objectively manifested impairments of important body functions, affecting not only their work schedules but also their ability to fully participate in their pre-accident activities. *Id.* at 122-123, 124-126. However, neither of the plaintiffs’ impairments were found to affect their general ability to lead their normal lives. *Id.* at 136-138. Like the plaintiffs discussed in *Kreiner*, plaintiff here was not able to work for a period following his injury, and is not able to fully engage in all pre-accident activities. However, the restrictions that plaintiff has suffered must be viewed as they affect the whole. Plaintiff has regained the full range of mobility in his leg and the lasting effects suffered by plaintiff are considerably less than those suffered by the plaintiffs in *Kreiner v Fischer (On Remand)*, 256 Mich App 680; 671 NW2d 95 (2003) and *Straub v Collette (On Remand)*, 258 Mich App 456; 670 NW2d 725 (2003). In light of our Supreme Court’s rulings in *Kreiner*, we conclude that the trial court in the present case properly granted summary disposition.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray

¹ *Kreiner, supra*, discusses the facts and rejects the holdings of both *Kreiner v Fischer (On Remand)*, 256 Mich App 680; 671 NW2d 95 (2003) and *Straub v Collette (On Remand)*, 258 Mich App 456; 670 NW2d 725 (2003).