

STATE OF MICHIGAN
COURT OF APPEALS

LAURA KNIGHT,

Plaintiff-Appellant,

v

KELLEY CLEAVES, LLOYD WARREN,
and EVELYN WARREN,

Defendants-Appellees,

and

TITAN INSURANCE COMPANY,

Defendant-Not Participating.

UNPUBLISHED
September 8, 2005

No. 262225
Macomb Circuit Court
LC No. 2004-000837-NI

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition in this automobile negligence action. We remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Under 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 v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), 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. If no material question of fact exists regarding the nature and extent of the plaintiff's injuries, the 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 determination 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. 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.*

On appeal, plaintiff maintains that the trial court erred in concluding that her injuries did not meet the serious impairment threshold under MCL 500.3135 without making the appropriate factual findings to support its decision. We agree. The trial court failed to make any of the findings outlined above, but merely determined that plaintiff’s injuries did not meet the threshold requirement. The trial court did not determine whether plaintiff sustained an objectively manifested impairment of an important body function. This is a necessary predicate for tort liability. Although the trial court may have simply assumed without deciding that these criteria were met, that decision is not clear from the record. Here, where at least part of plaintiff’s injuries do not appear to be directly measurable, we find the answer to this question important to the resolution of this case. The trial court also failed to examine plaintiff’s life before and after the accident or to take into account any of the factors listed above.

We find this case substantially similar to *May v Sommerfield*, 239 Mich App 197; 607 NW2d 422 (1999). We remand for the reasons stated in that case:

Here, while the trial court entered judgment in favor of defendants as a matter of law under MCR 2.116(C)(10), it failed to make the factual findings to support its judgment as required by MCL 500.3135(2)(a) We cannot decide the merits of plaintiff’s appeal absent these required findings. Accordingly, we remand for further proceedings. We instruct the trial court on remand to make findings concerning whether a factual dispute exists with respect to whether plaintiff suffered a “serious impairment of body function,” considering “the nature and extent” of plaintiff’s injuries consistent with MCL 500.3135(2)(a)(i) or (ii) In determining the “nature” of plaintiff’s injuries, the trial court should make appropriate findings concerning whether there is a factual dispute with respect to whether plaintiff has an “objectively manifested” impairment and, if so, whether “an important body function” is impaired. In determining the “extent” of plaintiff’s injuries, the trial court should make appropriate findings concerning

whether there is a factual dispute with respect to whether the impairment affects plaintiff's "general ability to lead [her] . . . normal life." [*May, supra*, 202-203.]¹

Remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens

¹ See also *Kern v Blethen-Coluni*, 240 Mich App 333, 346; 612 NW2d 838 (2000) (Meter, J., concurring in part and dissenting in part).

Court of Appeals, State of Michigan

ORDER

Laura Knight v Kelley Cleaves

Docket No. 262225

LC No. 2004-000837-NI

Brian K. Zahra
Presiding Judge

Mark J. Cavanagh

Donald S. Owens
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

As more fully stated in the accompanying opinion, on remand the trial court shall make specific findings concerning whether a factual dispute exists regarding whether plaintiff suffered a "serious impairment of body function," considering "the nature and extent" of plaintiff's injuries consistent with MCL 500.3135(2)(a)(i) or (ii).

Proceedings on remand in this matter shall commence within 21 days of the Clerk's certification of this order and they shall be given priority on remand until they are concluded. The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand. The trial court shall cause a transcript of all proceedings on remand to be prepared and filed within 21 days after completion of proceedings.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 08 2005

Date

Sandra Schultz Mengel
Chief Clerk