

STATE OF MICHIGAN
COURT OF APPEALS

SHIRLEY B. WILLIAMS,
Plaintiff-Appellee,

UNPUBLISHED
September 20, 2005

v

EVA GORRO,
Defendant-Appellant.

No. 261684
Wayne Circuit Court
LC No. 04-401364-NI

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying defendant's motion for summary disposition in this automobile negligence action. Because of an insufficient factual record and *Kreiner* analysis, we vacate the trial court's order and 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. "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." *Kreiner, supra* at 132. 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 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.* (Internal footnotes omitted.)].

In the instant case, the trial court failed to make any of the findings outlined above and merely denied defendant’s motion without explanation or the benefit of oral argument. The trial court never determined 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. The trial court also failed to discuss the actual extent of plaintiff’s injuries or continuing disability and whether any material factual dispute exists. Especially here, where the parties disagree with respect to whether there are any physician-imposed restrictions on plaintiff’s activities, we find the answer to this question important to the resolution of this case. See *Kreiner*, *supra* at 133 n 17. The trial court further failed to examine plaintiff’s life before and after the accident or to discuss any of the factors listed above on the record.

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* at 202-203.]

Vacated, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Pat M. Donofrio