

STATE OF MICHIGAN
COURT OF APPEALS

BRENT STANLEY and MARISA STANLEY,

Plaintiffs-Appellees,

v

LYNN MYERS LICHTI and ROBERT W.
LICHTI,

Defendants-Appellants.

UNPUBLISHED

January 26, 2006

No. 256110

Ingham Circuit Court

LC No. 03-000420-NI

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

In this no-fault case, defendants Lynn Myers Lichti and Robert W. Lichti (the Lichtis) appeal by leave granted from the circuit court's order denying their motion for summary disposition. We reverse. We decide this appeal without oral argument.¹

I. Basic Facts And Procedural History

This case arises out of injuries plaintiff Brent Stanley sustained in an automobile accident, on March 23, 2000. Robert Lichti allegedly ran a red light, causing Brent Stanley to strike Lichti's vehicle as it traveled through the intersection. Brent Stanley complained of back pain at the hospital afterward. He was diagnosed with "acute thoracic pain secondary to motor vehicle accident," but X-rays revealed nothing abnormal. Brent Stanley was discharged with pain medicine and instructions not to return to work for 48 hours.

Plaintiffs Brent Stanley and Marisa Stanley (the Stanleys) filed suit, alleging that the accident caused a significant impairment of an important body function, citing persistent back pain. The Lichtis moved for summary disposition, arguing that the Stanleys failed to meet the statutory threshold for a personal-injury suit under the no-fault insurance act.² The trial court denied the motion on the ground that a question existed for jury resolution concerning whether

¹ MCR 7.214(E).

² MCL 500.3101, *et seq.*

Brent Stanley's injury affected his general ability to lead his normal life. We granted leave and stayed the proceedings below.

II. Motion For Summary Disposition

A. Standard Of Review

We review a trial court's decision on a motion for summary disposition de novo as a question of law.³ Further, whether a person has suffered serious impairment of a body function is a question of law that we review de novo.⁴

B. Serious Impairment Of Body Function

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."⁵ "[S]erious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life."⁶ Where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered serious impairment of a body function, the question whether a person has suffered serious impairment of a body function is a question of law for the court.⁷ Accordingly, "the issue . . . should be submitted to the jury only when the trial court determines that an 'outcome-determinative genuine factual dispute' exists."⁸

The Michigan Supreme Court's decision in *Kreiner v Fischer*,⁹ indicates that the conditions reinstating tort liability under the no-fault insurance act are difficult to establish. "Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if . . . the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected" for purposes of establishing a serious impairment.¹⁰ The focus is not on the plaintiff's subjective pain and suffering but on injuries that actually affect the functioning of the body.¹¹ Residual impairments

³ *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999).

⁴ *McDaniel v Hemker*, ___ Mich App ___; ___ NW2d ___ (2005), slip op pp 2-3.

⁵ MCL 500.3135(1); *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004).

⁶ MCL 500.3135(7); *Kreiner*, *supra* at 129.

⁷ MCL 500.3135(2)(a).

⁸ *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), quoting *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

⁹ *Kreiner*, *supra*.

¹⁰ *Id.* at 131.

¹¹ *Miller*, *supra* at 249.

based on perceived pain are a function of “physician-imposed restrictions,” not “[s]elf-imposed restrictions.”¹²

In this case, Brent Stanley repeatedly complained of back pain and spasms, and continued to receive pain medicine, but certain medical records described the pain as nonspecific and lacking a precise diagnosis. Although Brent Stanley complained that his back pain caused him to limit the degree to which he played with his children and to shorten his golf game to nine holes, he does not assert that he was obliged wholly to abandon either activity. The evidence further shows that Brent Stanley was able to return to work, without restrictions, shortly after the accident; walk about Disneyland; help his brother work on his house; and go fishing. Brent Stanley thus complains of modifications in his routine, not a change in his life’s trajectory. A comparison of the lingering injuries and hindrances of which Brent Stanley complains, with those found not to be actionable in *Kreiner* confirms that the Stanleys do not have a case in this instance. Brent Stanley describes receiving only pain medicine and some massage therapy for his back. He complains of having to limit his activities but not of having to renounce them entirely.

We reverse the trial court’s decision and remand this case with instructions to grant the Lichtis summary disposition. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette

¹² *Kreiner, supra* at 133 n 17.