

STATE OF MICHIGAN
COURT OF APPEALS

MARK KORNACKI,

Plaintiff-Appellant,

v

ELLIOT GURDEN and PAULA GURDEN,

Defendants-Appellees.

UNPUBLISHED
February 16, 2006

No. 257646
Wexford Circuit Court
LC No. 03-017830-NI

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

In this no-fault case, plaintiff appeals as of right from the circuit court's order granting summary disposition to defendants. We reverse. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

In February 2003, defendant Elliot Gurden, driving a car owned by defendant Paula Gurden, ran a stop sign and collided with plaintiff's car. Plaintiff filed suit seeking to recover damages for serious impairment of body function. The trial court noted that the recent caselaw of our Supreme Court raised the standard for meeting the threshold for actionable injury under the no-fault act,¹ and dismissed the case with little elaboration.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

MCL 500.3135(1) provides that 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) states that "'serious impairment of body function' means an

¹ MCL 500.3101 *et seq.*

objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." The focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body. *Miller v Purcell*, 246 Mich App 244, 249; 631 NW2d 760 (2001). In *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), the Court stated that the following nonexhaustive list of objective factors may be of assistance in evaluating whether the plaintiff's "general ability" to conduct the course of his normal life has been affected:

(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. [*Kreiner, supra* at 133 (footnote omitted).]

Whether a person has suffered serious impairment of a body function is a question of law for the court 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. MCL 500.3135(2).

Plaintiff complains of injuries to his wrist, resulting in pain and reduced range of motion. He spent nine months undergoing operations on his wrist and having his wrist in a cast.² Plaintiff and his expert both asserted that plaintiff would continue to experience significant wrist pain³ and a limited range of motion in the injured hand. As a result of the injury, plaintiff was forced to take a job with less pay and to limit his daily activities. Plaintiff's expert further stated that plaintiff's wrist would not improve and would degenerate further, indicating that the pain and the limited range of motion in the hand are permanent. Viewing this evidence in a light most favorable to plaintiff, there exists a material factual dispute concerning the nature and extent of plaintiff's injuries that is material to the question whether plaintiff has suffered serious impairment of a body function.

² Nothing in MCL 500.3135 or *Kreiner* states that a plaintiff cannot recover for significant pain in and loss of the use of a dominant hand, even if the condition is only temporary and of short duration. To the contrary, our Supreme Court in *Kreiner* explicitly recognized that the fact that "the duration of the impairment is short does not necessarily preclude a finding of 'serious impairment of body function.'" *Kreiner, supra* at 134.

³ In *Kreiner, supra*, the Court stated that residual impairments based on perceived pain are a function of "physician-imposed restrictions," not "[s]elf-imposed restrictions. Plaintiff's pain was sufficient to constitute a "serious impairment of body function" in light of plaintiff's doctor's assertion that "[g]iven the type of injury sustained, it is expected that [plaintiff] will continue to experience wrist pain during and after activity." Although plaintiff's doctor may not have imposed specific restrictions based on plaintiff's pain, the doctor recognized that plaintiff's pain, coupled with the limited range of motion of the injured wrist, would restrict plaintiff's daily activities. Moreover, it is significant that plaintiff's daily activities were not restricted based on plaintiff's subjectively perceived pain alone, but also by the limited range of motion of the injured wrist, which was attested to by plaintiff's doctor. Thus, plaintiff's residual impairments based on perceived pain are not self-imposed restrictions.

Reversed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald