

STATE OF MICHIGAN
COURT OF APPEALS

ALOMA WELCH, as Next Friend of SHANE
WELCH, a Minor,

UNPUBLISHED
April 18, 2006

Plaintiff-Appellant,

v

BRENT ALAN YUHL, CONNIE MARIE YUHL,
and DOUGLAS LAVERN,

No. 266637
Branch Circuit Court
LC No. 04-012772-NI

Defendant-Appellee.

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

PER CURIAM.

Plaintiff Aloma Welch appeals as of right an order granting defendants' motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I

This third-party no-fault insurance action arises out of an automobile accident in which plaintiff's 14-year-old son, Shane, was a passenger in a car driven by defendant Brent Yuhl. Yuhl lost control of the car on a curve. The car struck a phone junction box and rolled over. Shane, who was in the rear seat, suffered a severe laceration and trauma to his left hand when his hand struck the window of the car.

II

This Court reviews de novo a trial court's grant of a motion for summary disposition. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). If no genuine issue of material fact exists, the moving party is entitled to judgment as a matter of law. *West, supra* at 183. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

III

On appeal, plaintiff argues that the trial court erred in finding that Shane did not suffer a serious impairment of body function that affected his general ability to lead his normal life under the standard established in *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). Our consideration of Shane's injury, and the standard of *Kreiner*, compels us to agree.

A

Under the no-fault automobile insurance act, MCL 500.3101 *et seq.*, tort liability for noneconomic losses is generally limited to instances in which the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1); *Kreiner, supra* at 129; *Williams v Medukas*, 266 Mich App 505, 507; 702 NW2d 667 (2005). A serious impairment of body function is an objectively manifested impairment of an important body function that affects the person's general ability to lead his normal life. MCL 500.3135(7); *Kreiner, supra* at 130.

A multi-step analysis is used to determine whether a plaintiff has suffered a serious impairment of body function. *Id.* at 131. A court must first determine if there is a factual dispute concerning the nature and extent of the plaintiff's injuries. *Id.* at 131-132. If there is no factual dispute concerning the nature and extent of the injuries, or the dispute is not material to whether the plaintiff has suffered a serious impairment of body function, the question whether the plaintiff has suffered a serious impairment of body function is decided by the court as a matter of law. MCL 500.3135(2)(a); *Kreiner, supra* at 131-132. The court must then decide if an important body function has been impaired. *Id.* If the court concludes that an important body function has been impaired, it must then determine if the impairment was objectively manifested. *Id.* If the impairment was objectively manifested, the court must then decide whether the impairment affected the plaintiff's general ability to lead a normal life. *Id.*

B

In the present case, there is no factual dispute concerning the nature and extent of plaintiff's injuries. Plaintiff suffered a complex left hand and wrist injury involving a seven-centimeter laceration of the palm, lacerations of tendons in his left hand, and three puncture lacerations to his left wrist. Therefore, it was proper for the court to determine as a matter of law whether Shane suffered a serious impairment of body function. MCL 500.3135(2)(i); *Kreiner, supra* at 131-132.

In determining whether an injury constitutes a serious impairment of an important body function, a court should consider the totality of the circumstances, including the nature and extent of the injury, the treatment required, the duration of the impairment, the extent of residual impairment and the prognosis for eventual recovery. *Kreiner, supra* at 133-134. In assessing whether the course of one's normal life has been affected, a court should compare the individual's lifestyle before and after the injury. *Id.* An injury need not be permanent to be an impairment of an important body function. *Id.* at 135.

Defendants do not challenge the conclusion that Shane's injury meets the requirement of an objectively manifested impairment. Although defendants do not expressly concede that the use of one's hand and wrist is an "important body function," they also do not contend that it is not. Under the facts of this case, it cannot be seriously disputed that Shane's injury involved an important body function since he lost complete use of his left hand for a period of time. See *Kreiner, id.* at 134 (closed fracture, open wounds, tendon injuries to two fingers, and quarter-size wound on the palm of non-dominant hand constituted an impairment of body function that was objectively manifested).

The remaining question is whether the impairment affected Shane's general ability to lead his normal life. *Id.* at 132. Viewing the totality of the circumstances, and all five factors listed in *Kreiner*, we conclude that Shane's injury meets this threshold requirement under *Kreiner*.

Shane suffered a deep, seven-centimeter laceration to his left hand that left a jagged scar in the center of his palm. After receiving initial emergency treatment the day of the accident, he was treated by a hand surgeon the following day, and underwent reconstructive surgery the following week. The operative report indicated the nature and extent of his injury, including significant damage to the tendons, nerves and some bones: 75 percent laceration of the flexor carpi radialis tendon; 50 percent laceration of the palmaris longus tendon; 90 percent laceration of the radial artery, with clot at the vessel; complete transection of the flexor digitorum sublimis and flexor digitorum profundus tendons to the small finger, and partial injuries to the long and ring fingers. There was also notable injury to the ulnar nerve and apparent complete transection of the deep motor branch of the ulnar nerve at the midpalmar arch. A portion of the ulnar vascular arch was disrupted. The deep fourth lumbrical was completely transected. At the very depth of the wound was a large fragment of glass. There was also a unicortical fracture of the trapezium and several fracture fragments within the depth of the wound.

Following surgery to repair the damage, Shane did not have use of his left hand for nearly two months pursuant to medical restrictions. As defendants note, over the course of the four months following the accident, Shane underwent 22 sessions of physical therapy. While it is true that following these physical therapy sessions Shane was medically released to resume regular activity on April 29, 2003, it is undisputed that the residual effect of his injury has continued to curtail or prohibit his normal activity.

Further, even at the time of the medical release, Shane's recovery, while noted to be excellent, was not in any sense complete. Follow-up treatment with the hand surgeon on August 12, 2003, noted "evidence of intrinsic muscular wasting with interosseous muscle bulk diminishment and slight limitation to abduction and adduction." At a follow-up one year later, the physical examination reflected diminished strength in the left hand, with a grip strength of 75 lbs. in his left hand, compared to 120 lbs. in his right hand, and key pinch strength of 8 lbs. in his left hand, compared to 20 lbs. in his right hand. At the one-year follow-up, the surgeon recommended that Shane utilize a padded glove to minimize impact and subsequent pain with physical activity, which Shane testified he has necessarily used, for instance, in playing high school football.

Evidence indicated that Shane has significant scar tissue, which is attached to a tendon, is a source of severe pain, and limits the use of his hand. He also has tingling and numbness in his hand, which precludes certain activities. “[W]here there is evidence that the physician has pinpointed a physiological basis for the pain or believes that the patient is truly suffering pain, such evidence, while not conclusive, lends support to a conclusion that instructions by the physician constitute physician-imposed restrictions.” *McDaniel v Hemker*, 268 Mich App 269, 284-285; 707 NW2d 211 (2005).

Additionally, the medical record coincides with Shane’s deposition testimony, and supports a conclusion, that his hand and wrist injuries have affected his “‘general ability’ to conduct the course of his normal life.” *Kreiner, supra* at 133. While Shane forthrightly testified that he is able to undertake many regular activities to a limited extent, such as washing dishes, yard work, football, and working on cars, he clearly testified that he could not undertake many other activities, and that his life had significantly changed in numerous respects.

For instance, Shane played football, but was limited to using mostly his right arm, and he wore the padded glove to protect his hand. He could no longer perform mechanic work on cars, which was a key activity in his life before his injury, and thus he had changed his career plan. He had a summer drywalling job, but he could not grip and lift the drywall sheets, which limited his job performance. He could not grip handles, and thus could not push a lawn mower or ride dirt bikes or “four-wheelers” as he did before his injury.

Further, the cold weather affects his hand, causing it to “curl,” and so he no longer shovels snow, and must limit his outside activities in rainy weather. And his diminished grip, loss of strength and dexterity, and pain otherwise preclude many activities that a teenager would normally undertake, such as sports, work, and recreation activities.

Shane’s post-impairment life is significantly different from his pre-accident life. Considering the “totality of the circumstances,” including the enunciated *Kreiner* factors, we conclude that Shane’s hand and wrist injury affects his general ability to lead his normal life. *Kreiner, supra* at 134; *McDaniel, supra* at 286. Accordingly, the trial court’s grant of summary disposition in favor of defendants was improper.

Reversed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra