

STATE OF MICHIGAN  
COURT OF APPEALS

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TONY TURRENTINE,

Plaintiff-Appellant,

v

GEICO INDEMNITY COMPANY,

Defendant-Appellee.

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UNPUBLISHED

June 27, 2006

No. 259600

Washtenaw Circuit Court

LC No. 04-1018-NF

Before: Fort Hood, P.J., and Cavanagh and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's opinion and order granting defendant's motion for summary disposition. Because the trial court failed to make appropriate factual findings as required under the Michigan no-fault act, MCL 500.3101, *et seq.*, we vacate the order granting summary disposition to defendant and remand for further proceedings.

Plaintiff was injured in an automobile accident when he was rear-ended by a semi truck. Because the driver of the semi truck effectively had no insurance, plaintiff brought this action against his own insurer, defendant, seeking uninsured motorist benefits. Defendant moved for summary disposition under MCR 2.116(C)(8) and (10), contending that plaintiff did not establish his injuries met the threshold requirement of serious impairment of a body function as mandated by the Michigan no-fault act. The circuit court agreed, granting defendant's motion for summary disposition.

On appeal, plaintiff contends, among other things, that the circuit court failed to provide sufficient factual findings as required by MCL 500.3135(2)(a). We agree. "This Court reviews de novo a trial court's grant of summary disposition." *Williams v AAA Michigan*, 250 Mich App 249, 257; 646 NW2d 476 (2002). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).<sup>1</sup> In evaluating a motion brought under this subrule, the Court considers

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<sup>1</sup> The trial court did not specify whether summary disposition was granted in defendant's favor pursuant to MCR 2.116(C)(8) or (C)(10). Because the parties submitted, and the court presumably considered, evidence outside the pleadings, however, we will treat the

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affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Spencer v Citizens Ins Co*, 239 Mich App 291, 299; 608 NW2d 113 (2000). Where the proffered evidence fails to establish a genuine issue regarding any material fact, however, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Questions of statutory construction are also reviewed de novo. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

Pursuant to the no-fault act, “a person remains subject to tort liability for noneconomic loss . . . only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). As used in this statute “serious 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. MCL 500.3135(7). Whether a plaintiff suffered a serious impairment of a body function is a question of law for the trial court to decide where (1) there is no factual dispute concerning the nature and extent of the person’s injuries or (2) there is a factual dispute concerning the nature and extent of the person’s injuries, “but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function.” MCL 500.3135(2)(a).

In this case, the trial court stated:

All right. I – as to the third party case and whether there’s—plaintiff has met the threshold of a serious impairment to allow it – the case to go to a jury, the Court’s reviewed the affidavit of Dr. Kurshaw [sic], and I will, for purposes of this motion, assume maybe more than find, that there is some complaints related to a condition that existed only after the accident versus before, and to that extent then, the Court will find that something occurred during the accident to cause some condition different than before the accident. However –

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-- as it relates to, and therefore objectively manifested, but as it relates to the affect on his general ability to lead his normal life and knowing what the *Kreiner*<sup>[2]</sup> decision has said, the Court grants defendant’s summary disposition finding that his daily life was not affected pursuant to the standard of *Kreiner*.

The trial court failed to make any factual findings relative to MCL 500.3135(2)(a). The trial court determined there was an injury, but never specified whether the injury was to plaintiff’s neck or back, or both (as claimed by plaintiff). It is unclear, then, whether a factual dispute as to the nature and extent of plaintiff’s injuries existed.

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motion as having been denied under MCR 2.116(C)(10). See *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

<sup>2</sup> *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).

The trial court further failed to make the requisite findings of fact concerning whether plaintiff suffered a serious impairment of a body function. The statutory definition of a “serious impairment of body function” can be broken down into three distinct requirements. First, there must be an objectively manifested injury. Second, the impairment must be of an important body function. Finally, the impairment must affect the person’s ability to lead his or her normal life.

According to *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), if a court determines that an injury constitutes an objectively manifested impairment of an important body function, then it must then determine whether the impairment affects the plaintiff’s general ability to lead his or her normal life. *Id.* at 132. In doing so, the trial court must objectively compare the plaintiff’s lifestyle and activities before the accident to his or her lifestyle and activities after the accident. *Id.* at 133. Specific activities should be examined with an understanding that not all activities have the same significance in a person’s overall life. Also, minor changes in how a person performs a specific activity may not change the fact that the person may still “generally” be able to perform that activity.” *Id.* at 131. The Court provided a nonexhaustive list of objective factors that may be of assistance in evaluating whether the plaintiff’s “general ability” to conduct the course of his or her 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.” *Id.* at 133.

Here, the court never specified what evidence led the court to conclude there was an objectively manifested impairment and, in fact, stated that an objective manifestation was assumed more than found. The court also never indicated if an important body function was impaired or what such impairment was.

Additionally, while the trial court stated that plaintiff’s daily life was not affected by his injury(ies), it failed to discuss the actual nature and extent of plaintiff’s injury, plaintiff’s treatment, whether there was any continuing disability, or plaintiff’s prognosis for eventual recovery. The court also failed to examine plaintiff’s life before and after the accident in an attempt to determine the extent of the injuries. Thus, the court failed to make the factual findings required by MCL 300.3135(2)(a).

In *May v Sommerfield*, 239 Mich App 197, 202; 607 NW2d 422 (1999), this Court stated that “a trial court cannot determine whether plaintiff suffered a serious impairment of body function as a matter of law without first making the factual findings required under MCL 500.3135(2)(a)(i) or (ii).” This Court thus remanded the case to the trial court, stating:

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); MSA 24.13135(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); MSA 24.13135(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 his . . . normal life.” [*Id.* at 202-203.]

This case being substantially similar to *May*, we similarly remand this case to the trial court for the requisite factual findings.

We vacate the order granting summary disposition to defendant and remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood  
/s/ Mark J. Cavanagh  
/s/ Deborah A. Servitto