

STATE OF MICHIGAN
COURT OF APPEALS

FOUAD NAKHLE,

Plaintiff-Appellant,

v

JANET B. NAKHLE and FATME
MOHAMAD HAMMOUD,

Defendants-Appellees.

UNPUBLISHED
November 7, 2006

No. 267553
Wayne Circuit Court
LC No. 03-332445-NI

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff Fouad Nakhle appeals by delayed leave granted from the trial court's orders granting summary disposition in favor of defendants Janet B. Nakhle and Fatme Mohamad Hammoud under MCR 2.116(C)(10) on the ground that Fouad Nakhle had not suffered a serious impairment of body function within the meaning of MCL 500.3135(1). We affirm. We decide this appeal without oral argument.¹

I. Basic Facts And Procedural History

In June 2002, Fouad Nakhle was a passenger in a car owned and operated by his wife, Janet Nakhle, when the car collided with another vehicle owned and operated by Hammoud. Fouad Nakhle sought medical treatment the following day for pain in his shoulder, neck, and back. He attended physical therapy for six to eight months thereafter, and he took medication. He testified that he could no longer perform household chores or play cards at church because of his pain. He also testified that he could no longer drive his taxicab more than several times a week. In an affidavit, Fouad Nakhle stated that he was "fully disabled" and that he could no longer engage in his hobbies. Janet Nakhle testified that on occasion she had to assist him in washing his head.

Fouad Nakhle filed suit, alleging that he suffered a serious impairment of body function as a result of Janet Nakhle and Hammoud's negligence. Janet Nakhle and Hammoud moved for

¹ MCR 7.214(E).

summary disposition, contending that, as a matter of law, Fouad Nakhle had not sustained a serious impairment of body function under MCL 500.3135 because his alleged impairments did not affect his general ability to lead his normal life. The trial court granted the motion, concluding that Fouad Nakhle's injuries would not "stand up" under the *Kreiner* test.² The trial court also denied Fouad Nakhle's motion for reconsideration, and he now appeals.

II. Summary Disposition

A. Standard Of Review

We review de novo the grant or denial of a motion for summary disposition.³ A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim.⁴ "When a motion under [MCR 2.116(C)(10)] is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial."⁵ The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law.⁶

B. Serious Impairment Of Body Function

MCL 500.3135 provides, in relevant part:

(1) 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.

* * *

(7) As used in this section, "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*. [Emphasis added]

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

³ *Id.* at 129.

⁴ *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004).

⁵ MCR 2.116(G)(4).

⁶ *Lind, supra* at 238; *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999).

If there is no material factual dispute concerning the nature and extent of a person's injuries, the issue of whether a serious impairment of body function has been established is one of law for the court.⁷

The *Kreiner* Court set forth the following multi-step inquiry for determining whether a plaintiff has suffered a "serious impairment of a body function" within the meaning of § 3135.⁸

First, a court must determine that there is no factual dispute 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. If a court so concludes, it may continue to the next step.^{9]}

Second, the court must determine whether the plaintiff has suffered an *impairment* of an *important* body function.¹⁰ Third, the court must determine whether the impairment is objectively manifested.¹¹ "Subjective complaints that are not medically documented are insufficient."¹² Finally, the court must determine whether "the impairment affects the plaintiff's general ability to lead his or her normal life."¹³

Fouad Nakhle argues on appeal that the trial court erred in determining that he had not suffered on objectively manifested injury to an important body function because Janet Nakhle and Hammoud conceded these points below, and because MRI and EMG tests established that he had suffered the alleged injuries.

"[I]n order for an impairment to be objectively manifested, there must be a medically identifiable injury or condition that has a physical basis."¹⁴ Additionally, the injury "must be capable of objective verification by a qualified medical person either because [it] is visually apparent or because it is capable of detection through the use of medical testing."¹⁵ Arguably, Fouad Nakhle's impairments are objectively manifested because his injuries are capable of detection (and may have, in fact, been detected) by medical testing, and because Janet Nakhle and Hammoud did not dispute this point below. However, any error on the trial court's part in

⁷ MCL 500.3135(2).

⁸ *Kreiner*, *supra* at 131-132.

⁹ *Id.* at 131-132; see also MCL 500.3135(2).

¹⁰ *Kreiner*, *supra* at 132 (emphasis added).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002), quoting SJI2d 36.11.

¹⁵ *Netter v Bowman*, ___ Mich App ___; ___ NW2d ___ (2006), slip op pp 10-11.

granting summary disposition on the basis of lack of objective manifestation¹⁶ does not require reversal because Fouad Nakhle has failed to demonstrate that his impairments affect his general ability to lead his normal life. And we will not reverse the trial court when it reaches the correct result albeit for the wrong reason.¹⁷

The *Kreiner* Court held that determining whether an impairment meets the tort threshold requires considering (1) “whether the plaintiff is, ‘for the most part’ able to lead his normal life,”¹⁸ and (2) “the effect of the impairment on the course of a plaintiff’s entire normal life.”¹⁹ The Court noted:

Although some aspects of a plaintiff’s entire normal life may be interrupted by the impairment, if, despite those impingements, 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 and he does not meet the “serious impairment of body function” threshold.^[20]

Thus, the Court stated that “the [trial] court must engage in an objective analysis regarding whether any difference between the plaintiff’s pre- and post-accident lifestyle has actually affected the plaintiff’s ‘general ability’ to conduct the course of his life.”²¹

The *Kreiner* Court set forth the following “nonexhaustive” list of objective factors to guide in the determination of whether the “general ability to lead his or her normal life” element of § 3135(7) has been satisfied: “(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.”²² The Court noted that “[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish” the extent of any residual impairment.²³

Although Dr. Ahmad’s records indicate that at some point he considered Fouad Nakhle to be disabled for a period of four weeks, Ahmad’s December 7, 2002, report indicates that the

¹⁶ We note that it is not entirely clear that the trial court granted summary disposition on the basis of a lack of objective manifestation because its line of questioning at the summary disposition hearing could also be consistent with determining whether there was an affect on Fouad Nakhle’s general ability to lead his normal life.

¹⁷ *Tipton v William Beaumont Hosp*, 266 Mich App 27, 37-38; 697 NW2d 552 (2005).

¹⁸ *Kreiner*, *supra* at 130.

¹⁹ *Id.* at 131.

²⁰ *Id.*

²¹ *Id.* at 133.

²² *Id.*

²³ *Id.* at 133 n 17.

prognosis was “probably remedial” and that he was no longer disabled or unable to perform household activities. A December 16, 2002, discharge summary from Fouad Nakhle’s physical therapist indicates that his prognosis was “good” and that he was functionally independent. Although a July 2003 report from Dr. Leisen indicates that Fouad Nakhle was unable to perform household chores or to work for an undetermined period of time, and although two notes from Dr. Rahim in 2005 and 2006 indicate that he was advised to “rest for only one month,” there is no evidence regarding how long he was disabled as a result of the 2002 accident. Moreover, although he claims that he is often unable to drive his taxicab, Dr. Leisen’s records from May and June 2003 indicate that Fouad Nakhle was able to drive the taxi despite his shoulder problem.

Medical records and other evidence supporting Fouad Nakhle’s claims of pain, and his resulting inability to perform household chores, to play cards, to engage in other unspecified “hobbies,” and (sometimes) to wash his head without assistance, do not support a finding that the “trajectory” of his normal life has been affected. Indeed, the evidence establishes that his life following the 2002 accident has continued in quite the same manner as it did for the previous thirteen years. Moreover, each of these limitations has been self imposed by Fouad Nakhle based on real or perceived pain, rather than imposed by a physician; thus, this evidence may not be used to establish the extent of plaintiff’s residual impairment.²⁴ In short, “[c]onsidered against the backdrop of his preimpairment life,” Fouad Nakhle’s “postimpairment life is not so different that his ‘general ability’ to lead his normal life has been affected.”²⁵

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette

²⁴ *Id.*

²⁵ *Id.* at 136.