

STATE OF MICHIGAN
COURT OF APPEALS

JULIE KAMICKA and BRIAN KAMICKA,

Plaintiff-Appellee,

v

JENNIFER ANN EAGLING,

Defendant-Appellant.

UNPUBLISHED

August 12, 2010

No. 291154

St. Clair Circuit Court

LC No. LC No.08-000316-NI

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

MEMORANDUM.

In this third-party claim under the no fault act, plaintiffs¹ appeal as of right the trial court's opinion and order granting defendant summary disposition. We vacate and remand.

The accident underlying this litigation occurred on October 3, 2006, when defendant's vehicle rear-ended plaintiff's vehicle. In February 2008, plaintiffs filed a complaint alleging, that as a result of this accident, that plaintiff suffered a serious impairment of body function and an aggravation of any preexisting conditions from a previous July 2005 car wreck. The trial court granted summary disposition for defendant, finding that plaintiff failed to establish that she suffered an objectively manifested injury because "[t]he only evidence of objectively manifested injuries in this case [consist of those that] existed both prior to and following the accident underlying this case." It also found that plaintiff failed to show that she suffered a serious impairment of body function because her life after the second accident remained the same as it had been after the first accident. See *Benefiel v Auto-Owners Ins*, 482 Mich 1087, 1087; 759 NW2d 814 (2008).

Plaintiffs appealed the trial court's order in September 2009 and the matter was set for hearing before this Court on August 5, 2010. In the interim, on July 31, 2010, our Supreme Court released its decision in *McCormick v Carrier*, ___ Mich ___ ; ___ NW2d ___ (2010), which overruled *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004) and established a new standard for evaluating third-party claims under MCL 500.3135(1) and (7). Thus, because the

¹ "Plaintiffs" refers to both Julie Kamicka and Brian Kamicka; "plaintiff" refers solely to Julie Kamicka because her husband's loss of consortium claim is not at issue in this appeal.

trial court's analysis and decision relied on *Kreiner*, and based upon the suggestion of plaintiff's counsel at oral argument, this case is vacated and remanded for further consideration in light of our Supreme Court's recent decision in *McCormick, supra*.

Vacated and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly