

STATE OF MICHIGAN
COURT OF APPEALS

ALISON R. NELSON,
Plaintiff-Appellant/Cross-Appellee,

v

FREDDIE DUBOSE,
Defendant-Appellee/Cross-Appellant.

FOR PUBLICATION
February 1, 2011
9:20 a.m.

No. 293455
Oakland Circuit Court
LC No. 2007-086875-NI

ALISON R. NELSON,
Plaintiff-Appellant,

v

FREDDIE DUBOSE,
Defendant-Appellee.

No. 294205
Oakland Circuit Court
LC No. 2007-086875-NI

Before: JANSEN, P.J., and SAWYER and O'CONNELL, JJ.

SAWYER, J.

Plaintiff appeals a judgment of no cause of action entered after a jury found that plaintiff had not suffered a serious impairment of body function. We affirm.

Defendant's car rear-ended plaintiff's car while plaintiff was stopped at a red light. At the time of the accident, plaintiff believed that she was uninjured. But plaintiff later complained of shoulder, neck, and back pain. Both parties provided medical experts to present to the jury. The jury heard the facts of the case and the differing medical opinions on plaintiff's injuries. Plaintiff argued that she suffered injuries to her neck and shoulder that caused her pain and limited her range of motion. She testified that she had undergone physical therapy and several surgeries and had been required to take off a significant amount of time from her work as a managing attorney for Ford Motor Company. But she was able to return to work, go on business trips, and participate in her different organizations and social events, although not as much as before the accident. Defendant argued that, even though plaintiff suffered an injury, there was enough

evidence for a reasonable jury to find that the injury did not result in a serious impairment of body function.

MCL 500.3135(1) states that, under the no-fault insurance act, a defendant is only subject to tort liability for noneconomic loss caused by a car accident “if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” At the time of the trial, the definition of “serious impairment of body function” focused on the injury and whether the injury affected an important body function to the point of preventing the plaintiff from leading a normal life. *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004), overruled by *McCormick v Carrier*, 487 Mich 180, 214; 795 NW2d 517 (2010). The Court in *Kreiner* gave a nonexhaustive list of factors to use in evaluating whether the plaintiff’s injuries affected the plaintiff’s general ability to lead a normal life. *Kreiner*, 471 Mich at 133. After the trial in this case, the Michigan Supreme Court overruled *Kreiner* in *McCormick*. *McCormick* shifted the focus from the injuries themselves to how the injuries affected the plaintiff’s body function. *McCormick*, 487 Mich at 197. This shift eased the burden on the plaintiff to show how the impairment prevented the plaintiff from leading a normal life. Now, the plaintiff has to show that the plaintiff’s ability to lead a normal life has been affected by comparing the plaintiff’s life before and after the injury. *Id.* at 200, 202-203.

Plaintiff argues that the facts clearly showed that plaintiff suffered a serious impairment of a body function and, therefore, the trial court erred by denying plaintiff’s motion for judgment notwithstanding the verdict (JNOV). Plaintiff argues that the case should be decided in light of *McCormick*. This Court reviews de novo the trial court’s decision to grant JNOV, and, if reasonable jurors could have reached different conclusions, the jury verdict must stand. *Genna v Jackson*, 286 Mich App 413, 417; 781 NW2d 124 (2009); *Guerrero v Smith*, 280 Mich App 647, 666; 761 NW2d 723 (2008). JNOV is only appropriate if the evidence fails to establish a claim as a matter of law. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003); *Prime Fin Servs LLC v Vinton*, 279 Mich App 245, 255-256; 761 NW2d 694 (2008).

While the definition of “serious impairment of body function” has changed, possibly allowing more serious-impairment questions to go to a jury, the statute itself remains the same. The question whether there is a serious impairment of body function is a question of law if there is no factual dispute about the injuries, or if any factual dispute is immaterial to the question. MCL 500.3135(2)(a); *McCormick*, 487 Mich at 192-193. Here, the court determined that there was a factual dispute and sent the question to the jury. The jury heard all the evidence presented by both parties on all the injuries and returned with a verdict finding no serious impairment of body function. While the jury did not specify which injuries it was referring to with the verdict, the jury instructions included all the injuries contested at trial. It can be assumed that the jury found that none of plaintiff’s injuries caused a serious impairment of a body function.

This Court reviews a trial court’s decision regarding jury instructions for an abuse of discretion. *Guerrero*, 280 Mich App at 660. The Michigan Supreme Court describes an abuse of discretion as a result that falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003); *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Therefore, this Court generally defers to the trial court’s decision unless that decision results in an outcome that is outside the range of principled outcomes. *Maldonado*, 476

Mich at 388. Here, there were no instructional errors. The jury was instructed that a serious impairment of a body function was “an objectively manifested impairment of an important body function that affects the plaintiff’s general ability to lead her normal life.” The jury instructions did not include wording specific to *Kreiner*’s more stringent definition. After hearing the instructions and all the evidence, the jury returned a verdict of no serious impairment of a body function that, because it was a question of fact, was within the range of principled outcomes. As long as the jury did not hear anything prejudicial in reference to *Kreiner*, the case does not have to be retried in light of *McCormick*. When reasonable jurors could differ in their interpretation of the evidence, the verdict will stand. *Guerrero*, 280 Mich App at 666.

In sum, even in light of *McCormick*, the trial court did not err by denying JNOV.

In light of our disposition of these issues, we need not address the parties’ remaining issues, which would be relevant only if we were to reverse the trial court’s judgment.

Affirmed. Defendant may tax costs.

/s/ David H. Sawyer

/s/ Peter D. O’Connell