

STATE OF MICHIGAN
COURT OF APPEALS

MARY GUZA,

Plaintiff-Appellant,

v

MELISSA JANE HOWARD,

Defendant-Appellant.

UNPUBLISHED
February 22, 2011

No. 295035
Macomb Circuit Court
LC No. 2009-000451-NI

Before: SAAD, P.J., and KELLY and DONOFRIO, JJ.

PER CURIAM.

In this automobile negligence case, plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition. We vacate and remand for further proceedings.

I. BASIC FACTS & PROCEDURE

Plaintiff and defendant were involved in a motor vehicle accident on November 26, 2007. Plaintiff claims that, along with other injuries, she suffered from injuries to her back, neck and head as a result of the accident. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff's injuries did not amount to a "serious impairment of body function" under MCL 500.3135(1) and (7). The circuit court agreed and granted defendant's motion. Plaintiff now appeals.

II. SERIOUS IMPAIRMENT

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because there was objective evidence that plaintiff suffered lumbar and cervical spinal injuries, a left shoulder injury, and psychological symptoms that affected her normal life. We review de novo a motion for summary disposition. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 592; 708 NW2d 749 (2005). A motion brought pursuant to MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, "leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding a motion for summary disposition under this rule, we consider the pleadings, affidavits,

depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

Under the no-fault act, MCL 500.3101 *et seq.*, “[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.” MCL 500.3135(1). A “serious impairment of body function” is defined in the act as “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).

In granting defendant’s motion for summary disposition, the circuit court relied upon a standard that is no longer good law, articulated in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), but reversed in *McCormick v Carrier*, 487 Mich 180, 184; ___ NW2d ___ (2010), to conclude that plaintiff “failed to develop a record sufficient to demonstrate the effect on her life from the injury is extensive enough to meet the ‘serious impairment’ threshold.” In *Kreiner*, the Michigan Supreme Court set out a multi-step test to aid the trial court in determining whether a plaintiff has sustained a serious impairment under MCL 500.3135(1) and (7). *Kreiner*, 471 Mich at 131-134. First, the trial court must determine whether there is a “factual dispute concerning the nature and extent of the person’s injuries[.]” *Id.* at 131-132. If there exists no factual dispute or a factual dispute that is immaterial to whether a person has suffered a serious impairment, then the trial court must decide whether “an ‘important body function’ of the plaintiff has been impaired.” *Id.* at 132. “If a court finds that an important body function has in fact been impaired, it must determine if the impairment is objectively manifested.” *Id.* A plaintiff who has shown objective evidence that an important body function has been impaired must further demonstrate that “the impairment affects the plaintiff’s general ability to lead his or her normal life.” *Id.* To determine whether an impairment affects a plaintiff’s normal life, “a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Id.* at 132-133. A plaintiff must demonstrate more than “a de minimis effect” on his or her life. *Id.* at 133.

The Michigan Supreme Court altered the analysis for determining whether a plaintiff has suffered a serious impairment under MCL 500.3135(1) when it decided *McCormick*, 487 Mich at 184, in July 2010. Under *McCormick*, the trial court is tasked with deciding whether a person has suffered a serious impairment of body function as a matter of law so long as there was no factual dispute regarding the nature and extent of the injuries that is material to determining whether a threshold injury was met. *Id.* at 215. To demonstrate the existence of “a serious impairment of body function,” a plaintiff must show:

- (1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions)
- (2) of an important body function (a body function of value, significance, or consequence to the injured person)
- that (3) affects the person’s general ability to lead his or her normal life (influences some of the plaintiff’s capacity to live in his or her normal manner of living). [*Id.*]

With regard to the third prong, “the statute merely requires that a person’s general ability to lead his or her normal life has been *affected*, not destroyed.” *Id.* at 202 (emphasis in original). The Supreme Court further explained:

Thus, while the extent to which a person's general ability to live his or her normal life is affected by an impairment is undoubtedly related to what the person's normal manner of living is, there is no quantitative minimum as to the percentage of a person's normal manner of living that must be affected. [*Id.* at 202-203.]

In other words, under *McCormick*, unlike in *Kreiner*, a de minimis effect on the injured person’s normal life might be enough to amount to a serious impairment under MCL 500.3135(1) and (7). This serious impairment analysis is fact specific and must be performed on a case-by-case basis. *McCormick*, 487 Mich at 215.

Since the circuit court evaluated defendant’s motion for summary disposition under the Supreme Court’s decision in *Kreiner*, which requires that the injured party show more than a de minimis effect of the injury on normal life to demonstrate a serious impairment under MCL 500.3135(1) and (7), we vacate the order granting summary disposition and remand to the circuit court to analyze defendant’s motion under the new standard set out in *McCormick*. Upon remand, the trial court may, in its discretion, receive updated medical evidence and briefing.

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

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio