

STATE OF MICHIGAN
COURT OF APPEALS

SHARON D. CASEY,
Plaintiff-Appellant,

UNPUBLISHED
February 22, 2011

v

PHILIP B. STACHLEWITZ,
Defendant,

No. 295835
Washtenaw Circuit Court
LC No. 08-001052-NI

and

CHARTER TOWNSHIP OF YPSILANTI,
Defendant-Appellee.

Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING, JJ.

MEMORANDUM.

In this third-party claim under the no-fault act, MCL 500.3101 *et seq.*, plaintiff-appellant Sharon D. Casey (plaintiff) appeals as of right the trial court's order granting defendant-appellee Charter Township of Ypsilanti (defendant) summary disposition under MCR 2.116(C)(10). We vacate and remand.

This case arises out of an October 8, 2007 motor vehicle accident wherein Philip B. Stachlewitz¹, defendant's fire marshal at the time, struck plaintiff's vehicle from behind while she was stopped at a red light. Plaintiff filed suit, alleging that she suffered a serious impairment of body function under MCL 500.3135(1), (7). Specifically, plaintiff asserted that she suffered a herniated disk in the C4-C5 area and that the accident exacerbated the pain in her neck and right shoulder due to physical ailments not caused by the accident with defendant. The trial court, using the standards established in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004),

¹ The trial court dismissed with prejudice plaintiff's claims against Stachlewitz by way of a January 28, 2009 stipulation and order.

granted defendant's motion for summary disposition and dismissed plaintiff's complaint with prejudice by way of a December 7, 2009 order.

After the trial court granted defendant's motion, our Supreme Court decided *McCormick v Carrier*, 487 Mich 180; ___NW2d ___ (2010). In *McCormick*, the Court reinterpreted MCL 500.3135(1) and (7), established new standards for determining when a person has suffered a serious impairment of body function, and overruled *Kreiner*. *McCormick*, 487 Mich at 191-214. As a general rule, judicial decisions are given full retroactive effect. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 205; 747 NW2d 811 (2008); *Hyde v Univ of Mich Bd of Regents*, 426 Mich 223, 240; 393 NW2d 847 (1986); *Paul v Wayne Co Dep't of Pub Serv*, 271 Mich App 617, 620-621; 722 NW2d 922 (2006). *McCormick* did not establish a new principle of law, but, rather, brought "case law in line with the explicit language of the [applicable] statute." *Id.* at 619. Nor can it be said that there are "reliance interests at work to support the continuation of [*Kreiner's*] erroneous interpretation of" the no-fault act. *Id.* at 622, quoting *Grimes v Dep't of Transportation*, 475 Mich 72, 88 n 49; 715 NW2d 275 (2006). Additionally, *McCormick* "gives effect to the intent of the Legislature" as expressed in the statute and thus, full retroactive application of *McCormick* will result in the resolution of claims under the no-fault act in accordance with that intent. Therefore, retroactivity will aid the administration of justice. *Id.* at 623-624. Accordingly, the Supreme Court's decision in *McCormick* applies retroactively. Because the trial court's analysis and order granting defendant's motion for summary disposition were based on the now-overruled standards for determining when a person has suffered a serious impairment of body function set forth in *Kreiner*, we vacate the order and remand for reconsideration under *McCormick*.

Moreover, having reviewed the record in a light most favorable to plaintiff, we note that there is an issue of fact regarding the element of causation. Whether this issue is one of material fact shall be decided by the trial court after it reconsiders whether plaintiff suffered a serious impairment of body function under *McCormick*.

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

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering