STATE OF MICHIGAN

COURT OF APPEALS

RODNEY MCCORMICK,

Plaintiff-Appellant,

v

LARRY CARRIER,

Defendant,

and

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
March 25, 2008

No. 275888
Genesee Circuit Court
LC No. 06-083549-NI

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

DAVIS, J. (*dissenting*).

I respectfully dissent. A motion for summary disposition pursuant to MCR 2.116(C)(10) should not be granted where the evidence shows a genuine question of some material fact. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). My reading of the evidence reveals enough of a factual question that this case should not have been taken from the jury.

As the majority explains, under MCL 500.3135, our Supreme Court stated in *Kreiner v Fisher*, 471 Mich 109; 683 NW2d 611 (2004), that a plaintiff must show an "objectively manifested impairment" that affects his or her "general ability to lead his or her normal life" in order to recover in tort for an injury sustained in a motor vehicle accident. In this case the injury is undisputed: plaintiff's left ankle was broken, and plaintiff required two surgical procedures to repair the injury. The issue here is whether the injury may affect "the course or trajectory of the plaintiff's normal life." *Kreiner*, *supra* at 131.

The majority finds the latter requirement unmet because plaintiff is no longer under any physician-imposed medical restrictions, has returned to work, continues to fish and golf, and admitted at his deposition that his life was "painful, but normal." Certainly, these facts are one side of the equation. However, the evidence also shows that plaintiff's work plays a very large role in his life, and he is "at another duty" because his employer evaluated plaintiff's physical condition and, on that basis, did not consider him capable of performing his prior duties. Plaintiff's doctor and an independent doctor both found some indication of degenerative joint

disease in his ankle. Although plaintiff's restrictions might be pain-based, they are not merely self-imposed. See *Kreiner*, *supra* at 133 n 17. In fact, *Kreiner* did not hold that a doctor must provide an expert medical opinion regarding plaintiff's life, but rather that whatever effect an injury has had on the plaintiff's life must be determined objectively. Additionally, *Kreiner* held that the *entirety* of the plaintiff's life must be reviewed.

Therefore, I find two reasons why this case should not have been disposed of by a motion for summary disposition. First, the *entire* "trajectory" of plaintiff's life must be considered – but plaintiff's life is not yet over, and there is enough evidence in the record to show that he faces at least the possibility of future problems. Second, there is also evidence in the record that plaintiff's life is not, in fact, normal, and that this has been objectively and independently determined by two doctors and plaintiff's employer. This is not a case devoid of competent evidence in support of either party's position, and plaintiff should have been permitted to submit what evidence there is to examination and evaluation by the trier of fact.

For the reasons stated, I would reverse.

/s/ Alton T. Davis