

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA ANDERSON,

Plaintiff,

and

JAMES ANDERSON,

Plaintiff-Appellant,

v

ELIZABETH ALEXANDER,

Defendant-Appellee.

UNPUBLISHED

June 5, 2008

No. 277980

Kent Circuit Court

LC No. 06-002053-NI

Before: Davis, P.J., and Murray and Beckering, JJ.

MURRAY, J. (*dissenting*).

After conducting a de novo review of the issue raised in this case, I would affirm the trial court's order granting defendant's motion for summary disposition. As explained below, the trial court was correct in holding that no genuine issue of material fact existed, and that plaintiff James Anderson had not suffered a serious impairment of an important body function as defined by law.

MCL 500.3135(1) provides that 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." Subsection (7) states that, "'serious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life."

As reflected in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), the conditions reinstating tort liability under the no-fault act are not easily established. In *Benefiel v Auto-Owners Ins Co*, 277 Mich App 412, 415-416; 745 NW2d 175 (2007), we explained the multi-step test used in these cases:

To help determine whether a plaintiff has met the statutory threshold, the *Kreiner* Court developed a multi-step process to assist a trial court in determining whether a plaintiff has suffered a threshold injury. *Kreiner, supra* at 131. This multi-step inquiry entails several steps. First, a court must determine that there is no factual dispute concerning the nature and extent of the person's injuries; or if there is a factual dispute, that it is not material to the determination whether the person has suffered a serious impairment of body function. If a court so concludes, as the trial court did here, it may continue to the next step. *Id.* at 132. Second, if a court can decide the issue as a matter of law, it must next determine if an "important body function: of the plaintiff has been impaired. *Id.* Third, if the court finds that an important body function has been impaired, the court must next determine if the impairment is objectively manifested. *Id.* An objectively manifested impairment is a "medically identifiable injury or condition that has a physical basis." *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). Fourth, if the court "finds that an important body function has been impaired, and that the impairment is objectively manifested, it then must determine if the impairment affects the plaintiff's general ability to lead his . . . normal life." *Kreiner, supra* at 132. Finally, and with respect to the fourth step, as will be explored below, in determining whether the course of the plaintiff's normal life has been affected, 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. Once this is identified, the court must engage in an objective analysis regarding whether any difference between the plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's "general ability" to conduct the course of his life. *Id.* at 132-133.

In regard to the pre- and post-accident comparison, the *Benefiel* Court stated:

Thus, we must engage in a fact intensive inquiry regarding what constituted plaintiff's "whole life" at the time of the second accident in order to determine whether the second accident affected the course of plaintiff's "normal life." In other words, our analysis of plaintiff's pre- and post-second automobile accident lifestyle necessarily requires us to consider plaintiff's injuries, functional deficiencies, and activity limitations existing before the second automobile accident because they may have a direct affect on what constitutes plaintiff's "normal life. By the same token, however, when faced with a multiple accident scenario as we have here, injuries separate from the later accident. [*Id.* at 416-418.]

Or, as the *Kreiner* Court put it, "Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if . . . the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected" for purposes of establishing a serious impairment. *Kreiner, supra* at 131.

Here, the trial court reviewed the undisputed facts in light of the applicable law, and concluded that given plaintiff's prior health and medical conditions, plaintiff's impairments did not affect his general ability to lead his normal life:

Looking at the totality of the circumstances, it does not appear that the accident has changed the course or trajectory of Mr. Anderson's life. Mr. Anderson did not testify to or provide proof of any physician imposed restrictions,^[1] which as a result of the accident, necessitate continued assistance in the activities of daily life. Mr. Anderson has not indicated why he is no longer able to perform yard work or to what extent the ability to perform such work was an important aspect of his life. Mr. Anderson continues to drive, he is able to cook and perform household chores, and although he required some assistance with personal care immediately following the accident, within six weeks he recovered to the extent that such help was no longer necessary. He appears to be able to do most of the same things post-accident as he did before, although not as frequently or for the same duration. Mr. Anderson was disabled prior to the accident due to a low back injury and therefore the accident has not affected his ability to work. While some aspects of his entire normal life may be interrupted by the aggravation or exacerbation of his pre-existing condition, these changes, unfortunately, do not meet the serious impairment of body function threshold.

Plaintiff presents no evidence to suggest that his various pre-accident disabilities were of a temporary sort made permanent by the accident. Instead, all indications are that the injuries resulting from the accident somewhat aggravated the condition of a person whose frailty was already well ensconced. At most, the evidence reveals a moderate adjustment in plaintiff's lifestyle, not a change in his life's trajectory. In my view, the trial court properly granted defendant's motion for summary disposition of plaintiff's claim.

/s/ Christopher M. Murray

¹ Nowhere in Dr. Luder's affidavit does he indicate that *he* placed plaintiff on any restrictions because of this accident.