

STATE OF MICHIGAN
COURT OF APPEALS

LISA A. CHASE,

Plaintiff,

and

JEFFREY M. CHASE,

Plaintiff-Appellant,

v

SUSAN B. POMILIA, ALYSSA K. POMILIA,
GEORGE M. DEMAR, and CARL F. DEFILIPPO
III,

Defendants-Appellees.

UNPUBLISHED

May 18, 2010

No. 289680

Macomb Circuit Court

LC No. 2007-003979-NI

Before: METER, P.J., and MURRAY and BECKERING, JJ.

MURRAY, J. (*dissenting*).

The majority opinion reverses the trial court's order granting defendant's motion for summary disposition, and rules that plaintiff has established a serious impairment of body function as a matter of law under MCL 500.3135(7). In doing so, the Court primarily relies upon the Supreme Court order in *Benefiel v Auto Owner's Ins Co*, 482 Mich 1087; 759 NW2d 814 (2008), and the admittedly nonbinding unpublished split decision in *Anderson v Alexander*, unpublished opinion per curiam of the Court of Appeals, issued June 5, 2008 (Docket No. 277980). In my view, however, this case is properly resolved under the still binding decision of *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), and under that decision the trial court's thorough opinion should be affirmed.

In my view, the majority does not properly adhere to the standards set forth in *Kreiner*. In that case, the Supreme Court held, *inter alia*, that a serious impairment of body function is proven when the injury affects the plaintiff's general ability to leave his or her normal life. See MCL 500.3135(7) ("serious impairment of body function" means an objectively manifested impairment of an important body function that affects the person's general ability to live his or her *normal life*") (emphasis added). Under this standard, which is based on the text of the statute, "[a]lthough some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite

those impingements, the course of trajectory of the plaintiff's normal life has not been affected, and the plaintiff's 'general ability' to lead his normal life has not been affected" *Kreiner*, 471 Mich at 131. The *Kreiner* Court provided the following instruction on deciding this issue:

[T]o "lead" one's normal life contemplates more than a minor interruption in life. To "lead" means, among other things, "to conduct or bring in a particular course." Given this meaning, the objectively manifested impairment of an important body function must affect the *course* of a person's life. Accordingly, the affect of the impairment on the course of a plaintiff's entire normal life must be considered. Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite those impingements, 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 and he does not meet the "serious impairment of body function threshold." [*Id.* at 130-131, quoting *Random House Webster's Unabridged Dictionary* (2001) (emphasis in original, footnote 14 omitted).]

The record in this case is full of undisputed evidence that the trajectory of plaintiff's normal life has not been affected by the automobile accident. As the trial court noted in its opinion, well before the accident in this case, plaintiff had been determined disabled by the Social Security Administration. In his application for those benefits, which were largely based upon a psychological disability, plaintiff indicated that he could not do virtually all the things he now claims he could not do because of the accident. For instance, for many years before the accident plaintiff had not worked, golfed, fished, boated, or even done many household chores. Indeed, he admittedly stayed in his bedroom on and off for many days, in large part because of his depression. His same life pattern continued after the accident, albeit with some more pain. However, plaintiff's normal life trajectory remains the same. The trial court's conclusion in this regard is worth repeating:

While Plaintiff asserts the subject accident has caused new complaints of back pain and additional depression, the Court finds there is insufficient evidence that Plaintiff's general ability to live his normal life was affected by any alleged serious impairment of body function. Plaintiff has not shown a change of employment. He has not shown a change in his home life. He has not shown a change in avocation. While Plaintiff asserts in his response brief that he had been improving from the time of his application for Social Security benefits up to the time of the subject accident, he does not present specific evidence of the alleged improvements. Instead, it appears from the evidence presented that his pre- and post- accident life remains the same. Despite the presence of any accident-related impingements, the course or trajectory of plaintiff Jeffrey Chase's normal life has not been affected. Therefore, plaintiff's "general ability" to lead his normal life has not been affected and he does not meet the "serious impairment of body function" threshold.

The trial court's opinion is consistent with the holding in *Kreiner*, as well as the result in *Minter v City of Grand Rapids*, 480 Mich 1182; 747 NW2d 229 (2008) adopting the dissenting opinion in *Minter v City of Grand Rapids*, 275 Mich App 220, 233-243; 739 NW2d 108 (2007). For these reasons, I would affirm the learned trial court's decision and order granting defendant's motion for summary disposition.

/s/ Christopher M. Murray