STATE OF MICHIGAN

COURT OF APPEALS

JAKE B. VLIETSTRA,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE GROUP,

Defendant-Appellee,

and

HILARY J. ORMOND,

Defendant.

UNPUBLISHED
November 19, 2009

No. 287001
Kent Circuit Court
LC No. 07-006360-NI

Before: Talbot, P.J., and O'Connell and Davis, JJ.

TALBOT, PJ (*dissenting).*

I respectfully disagree with the decision to reverse the trial court's grant of summary disposition in favor of Auto-Owners Insurance Group, because I do not find that plaintiff has demonstrated a serious impairment of bodily function that has impacted his general ability to lead his normal life.

While I do not dispute the injuries sustained by plaintiff, his treatment for those injuries and recovery were of a relatively short duration. Plaintiff retained the ability to perform his own self-care and returned to work and school with only "pain based" restrictions. Plaintiff acknowledged that the accident and resultant injuries did not impact his educational or career choices. Plaintiff was able to resume jogging, but was recommended to restrict the duration and location of this activity to an elliptical machine. Plaintiff only contends that he has self-restricted his participation in certain recreational activities due to the experience of back pain when engaged in these activities and limits the amount of books he carries while at school.

As part of the determination of whether an "important body function" has been impaired, a trial court must objectively ascertain whether any change in lifestyle "has actually affected the plaintiff's 'general ability' to conduct the course of his life." *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). "Merely 'any effect' on the plaintiff's life is insufficient because de minimus effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his life." *Id.* at 133. In other words:

> 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 131.]

Although this Court has recognized that "sporting activities . . . may rise to the level of serious impairment of a body function" for an individual that regularly engages in such activities, *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005), "a negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Kreiner, supra* at 137. Further, "[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point." *Id.* at 133 n 17.

Because the legal precedent established by our Supreme Court in *Kreiner* binds us, I would concur with the trial court's grant of summary disposition in favor of defendant. See *Kelly-Stehney & Assoc v MacDonald's Industrial Products, Inc*, 265 Mich App 105, 107; 693 NW2d 394 (2005). Although I do not doubt that certain aspects of plaintiff's life may have been impacted by his impairment, I do not believe that the course or trajectory of his normal life has been affected. Consequently, and consistent with *Kreiner, supra* at 131, I find that plaintiff's injury does not meet the threshold necessary to establish a "serious impairment of body function."

/s/ Michael J. Talbot