

STATE OF MICHIGAN
COURT OF APPEALS

DARRELL SIKKENG, A,

Plaintiff,

and

RUTH SIKKENG, A,

Plaintiff-Appellant,

v

CHARLES TOWNSEND,

Defendant-Appellee.

UNPUBLISHED

June 14, 2011

No. 297195

Muskegon Circuit Court

LC No. 09-046587-NI

Before: SHAPIRO, P.J., and O'CONNELL and OWENS, JJ.

MEMORANDUM.

In this action under the no-fault insurance act, MCL 500.3101 *et seq.*, plaintiff Ruth Sikkenga¹ appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We vacate the trial court's order and remand for reconsideration in light of *McCormick v Carrier*, 487 Mich 180; 795 NW2d 517 (2010).

Plaintiff sustained pelvic fractures in a 2007 automobile accident involving defendant. Plaintiff and her husband filed a tort action against defendant in 2009. In February 2010, defendant moved for summary disposition, arguing that plaintiff did not have a threshold injury to support the tort action. The trial court agreed, and in March 2010 concluded that plaintiff's injuries did not meet the threshold requirement under the test set forth in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).

¹ Plaintiff Darrell Sikkenga was dismissed with prejudice from the suit below so he is not a party to this appeal. References to "plaintiff" in the singular throughout this opinion pertain to Ruth Sikkenga only.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). The determination of whether plaintiff's suit can go forward is controlled by MCL 500.3135, which reads in relevant part:

(1) 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.

* * *

(7) As used in this section, "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.

At the time the trial court rendered its decision, the application of this statute was controlled by *Kreiner*. However, in July 2010, our Supreme Court issued *McCormick v Carrier*, 487 Mich 180; 795 NW2d 517 (2010). The *McCormick* decision overruled the *Kreiner* Court's interpretation of MCL 500.3135.

Because the trial court utilized the now-overruled *Kreiner* standard, the trial court's grant of summary disposition must be vacated and the case remanded for further proceedings in light of *McCormick*.

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

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Donald S. Owens