

STATE OF MICHIGAN  
COURT OF APPEALS

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RYAN PETHERS,

Plaintiff-Appellant,

v

ESTATE OF GREGORY BURMANIA, by  
THOMAS F. GRIFFITH, Personal Representative,

Defendant-Appellee.

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UNPUBLISHED

April 21, 2011

No. 295755

Kent Circuit Court

LC No. 09-002422-NI

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In this action brought under the no-fault insurance act, MCL 500.3101 *et seq.*, plaintiff appeals as of right the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). For the reasons set forth in this opinion, we vacate and remand.

This case arises from a car accident that occurred on July 23, 2006. Plaintiff was a passenger in a vehicle that was hit when Gregory Burmania failed to stop at the intersection of Parnell Avenue and Vergennes Street in Kent County. Upon impact, plaintiff was thrown from the vehicle and suffered a T11-12 compression fracture and cervical strain. Burmania died in the accident.

Defendant moved for summary disposition, arguing that plaintiff had not suffered "a serious impairment of body function" under MCL 500.3135(1), (7). Initially, the trial court denied the motion as premature because discovery had not closed. However, after discovery was completed, the trial court granted defendant's second motion for summary disposition based on the standards set forth in *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), overruled *McCormick v Carrier*, 487 Mich 180; \_\_\_ NW2d \_\_\_ (2010).

While plaintiff's appeal was pending, our Supreme Court released its decision in *McCormick*, 487 Mich 180, which overruled *Kreiner*. Because the Supreme Court established new standards in *McCormick* for evaluating third-party claims under MCL 500.3135(1) and (7), that could not have been known to the trial court at the time of entry of its order, we vacate the trial court's order granting defendant's motion for summary disposition and remand for further proceedings consistent with *McCormick*.

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

/s/ Douglas B. Shapiro  
/s/ E. Thomas Fitzgerald  
/s/ Stephen L. Borrello