

STATE OF MICHIGAN
COURT OF APPEALS

JESSE JAMES SMITH,

Plaintiff-Appellant,

v

RICHARD MEREDITH TOWNSEND,

Defendant-Appellee.

UNPUBLISHED

November 12, 2002

No. 234446

Benzie Circuit Court

LC No. 00-005821-NI

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion for summary disposition and granting the motion for summary disposition filed by defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 24, 1998, plaintiff was a passenger in a vehicle driven by defendant. The vehicle left the road and hit a tree. Plaintiff was taken to the emergency room, where he was found to have a laceration over his right eye, a contusion on his face, a right orbital wall fracture, and two nondisplaced fractured ribs. The laceration was sutured, and the other injuries did not require treatment. Shortly after the accident, plaintiff developed urinary incontinence. This problem resolved itself by March 4, 1998.

On November 17, 1998, plaintiff sought treatment for back pain. He told his family physician that he had been experiencing intermittent back pain, that it had worsened in the last two weeks, and that he had to discontinue working as a carpenter as a result. An MRI detected two very small disc protrusions in the lumbar area of his back; however, the tests were negative in all other respects.

Plaintiff filed suit alleging that the injuries he suffered in the accident constituted a serious impairment of body function and serious permanent disfigurement. Both parties moved for summary disposition pursuant to MCR 2.116(C)(10). Defendant argued the medical evidence did not establish that plaintiff's injuries constituted a serious impairment of body function and did not support a finding the injuries had affected plaintiff's ability to lead his normal life. Plaintiff argued the evidence demonstrated his back injuries had left him unable to work in the construction field and had severely restricted his leisure activities. The trial court granted defendant's motion for summary disposition and denied plaintiff's motion, finding the

evidence did not demonstrate the existence of a serious impairment of body function, and did not show any injuries that plaintiff suffered in the accident affected his ability to lead his normal life.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A serious impairment of body function is "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a).

In determining whether the impairment of the important body function is serious, the court should consider factors such as the extent of the injury, the treatment required, the duration of the disability, and the extent of residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). In assessing the extent of the injury, a court may compare the plaintiff's lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Plaintiff argues the trial court erred by granting defendant's motion for summary disposition and denying his motion. We disagree and affirm the trial court's decision. The evidence showed that plaintiff had several objectively manifested injuries, including a laceration over his right eye, a fracture of the right orbital wall, and two fractured ribs. The undisputed evidence showed that these injuries healed rapidly and did not require further care. Plaintiff developed a problem with urinary incontinence; however, this problem resolved itself within six weeks after the accident. No evidence showed that plaintiff suffered any residual impairments resulting from these injuries.

Plaintiff did not seek treatment for back pain until nearly ten months after the accident. Objective tests showed the existence of two small herniated discs; however, the condition was described as degenerative and was determined to not be the cause of plaintiff's right side pain. Furthermore, the evidence did not establish that plaintiff's pattern of working only sporadically changed after the accident or that he was no longer able to engage in activities such as hunting and fishing. The evidence showed that plaintiff's general ability to lead his normal life was not significantly altered by the injuries he sustained in the accident. *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001); *May, supra*. The trial court determined the issue whether plaintiff suffered a serious impairment of body function was a question of law, MCL 500.3135(2)(a)(ii), and correctly granted defendant's motion for summary disposition and denied plaintiff's motion.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter