

STATE OF MICHIGAN
COURT OF APPEALS

THEODORE SCHWARTZENFELD and NANCY
SCHWARTZENFELD,

UNPUBLISHED
November 26, 2002

Plaintiffs-Appellants,

v

No. 237449
Oakland Circuit Court
LC No. 01-029119-NI

MICHELLE LYNN RAUPP,

Defendant-Appellee.

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10) in this third-party no-fault insurance action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Theodore Schwartzenfeld sustained injuries to his left thumb and shoulder after his bicycle was hit by a car driven by defendant. He brought this action alleging that he sustained a serious impairment of body function and permanent serious disfigurement. His wife brought a loss of consortium claim, which is not germane to this appeal. The trial court granted summary disposition to defendant, finding that plaintiffs failed to meet the no-fault threshold as a matter of law.

We review a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Under MCL 500.3135, a person remains subject to tort liability for noneconomic loss caused by his use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement. The issue of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement is a question of law if there is no factual dispute concerning the nature and extent of the person's injuries, or if there is a dispute that is not material to the determination. § 3135(2)(a).

A "serious impairment of body function" is defined as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." § 3135(7). In determining whether a plaintiff has suffered a serious impairment of body function, the trial court must consider the nature and extent of the injuries, the duration of treatment, and the duration of the disability. *Kern v Blethen-Coluni*, 240 Mich

App 333, 341; 612 NW2d 838 (2000). A court should compare plaintiff's lifestyle before and after the accident in determining whether a factual dispute exists with respect to the extent of plaintiff's injuries. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000). A plaintiff must show that his general ability to lead his normal life has been significantly altered by his injury. *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001).

In this case, plaintiff Theodore Schwartzenfeld failed to present evidence that his general ability to lead his normal life had been significantly altered. He is a doctor and surgeon, and after the accident he could perform the same type and quantity of surgery as he performed prior to the accident. His social life, other than a temporary disruption of his bicycling and golf activities, was unaffected by the accident. Also, we believe, as a matter of law, that the minor scar on his shoulder cannot be characterized as a serious disfigurement, and there was no evidence that the scar was permanent. Therefore, we hold that because plaintiff Theodore Schwartzenfeld failed to meet the threshold requirements of § 3135, summary disposition in favor of defendant was proper.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski