

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN M. ROSLONIEC,

Plaintiff-Appellant,

v

KEITH M. BROUILLETTE,

Defendant-Appellee.

UNPUBLISHED

September 16, 2003

No. 240245

Kent Circuit Court

LC No. 01-000889-NI

Before: Owens, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition on the ground that plaintiff failed to establish a "serious impairment of body function" under MCL 500.3135(1) of the no-fault act. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 12, 1998, plaintiff was involved in a motor vehicle accident involving defendant and allegedly suffered injuries to his neck, back, left shoulder, and right leg. On January 29, 2001, plaintiff filed this third-party no-fault action. On January 14, 2002, defendant filed his motion for summary disposition, pursuant to MCR 2.116(C)(10), arguing that plaintiff failed to prove that he suffered "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life" as required under MCL 500.3135(7). In particular, defendant argued that an EMG of plaintiff's upper and lower extremities was normal, all x-ray studies were negative with the exception of minor degenerative changes in his lumbar spine and left shoulder, and that physical examinations revealed only cervical muscle spasms consistent with cervical muscle strain that was completely resolved by May 6, 1998. Defendant further argued that these minor and preexisting problems did not affect plaintiff's general ability to lead his life because he was able to return to work full-time as of October 21, 1998, could take care of his personal needs, and engage in recreational activities that he participated in before the accident.

In response to defendant's motion for summary disposition, plaintiff argued that he had suffered the requisite degree of injury in that he was diagnosed with cervical and vertebral sprain with paravertebral muscle spasms, and a left rotator cuff strain and impingement with associated limited range of motion. Plaintiff also listed his subjective complaints of pain in his back, hips, neck, and shoulder, which limited his physical abilities and caused him to require medication and undergo physical therapy. After hearing oral argument, the trial court granted defendant's

motion holding, in pertinent part, that plaintiff did not suffer a serious impairment of a body function because “[m]uscle spasms, tenderness, and limited flexibility do not constitute serious impairment of a body function,” and plaintiff was “able to attend to most all, if not all, of the activities he did prior to the accident.” Plaintiff appeals.

Plaintiff argues that summary disposition was improper because there was a factual dispute as to whether plaintiff suffered the requisite degree of injury. We disagree. This Court reviews the grant or denial of a motion for summary disposition de novo. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and should be granted when, considering the documentary evidence in a light most favorable to the nonmoving party, there is no genuine issue of disputed material fact. *Ottaco, Inc v Gauze*, 226 Mich App 646, 650; 574 NW2d 393 (1997).

Under the no-fault act, in particular MCL 500.3135(1), a plaintiff may not recover noneconomic losses unless the plaintiff suffered a “serious impairment of body function” which, according to MCL 500.3135(7), is “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” Whether the plaintiff suffered such an injury is a question of law if the trial court finds either of the following:

- (i) There is no factual dispute concerning the nature and extent of the person’s injuries.
- (ii) There is a factual dispute concerning the nature and extent of the person’s injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement. [MCL 500.3135(2)(a).]

In this case, the trial court relied on MCL 500.3135(2)(a)(ii) to support the dismissal of this action. We agree with the trial court’s decision. See *Kern v Blethen-Coluni*, 240 Mich App 333, 341-342; 612 NW2d 838 (2000). Even if the factual dispute regarding the nature and extent of plaintiff’s injuries was resolved in plaintiff’s favor, defendant would be entitled to summary disposition. Evidence of plaintiff’s injuries consisted primarily of his subjective complaints of discomfort. The only objective manifestations of plaintiff’s injuries were the presence of muscle spasms and a limited range of motion of his left shoulder and spine. He was diagnosed with severe cervical and vertebral sprain with paravertebral muscle spasms and a rotator cuff strain or possible tendonitis. We agree with the trial court that these injuries do not constitute a “serious impairment of body function” within the contemplation of the no-fault act. See MCL 500.3135(1) and (7).

Because plaintiff has not established “an objectively manifested impairment of an important body function” we need not address his argument that his impairment “affects the person’s general ability to lead his or her normal life.” See MCL 500.3135(7). In any event, after review of the record, we agree with the trial court’s conclusion that plaintiff was “able to

attend to most all, if not all, of the activities he did prior to the accident.” Plaintiff can attend to his personal needs and can engage in recreational activities.

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter