

STATE OF MICHIGAN
COURT OF APPEALS

THORIN I. TAYLOR,

Plaintiff-Appellant,

v

RICHARD BOYCE PERRY,

Defendant-Appellee.

UNPUBLISHED
December 2, 2003

No. 241867
Shiawassee Circuit Court
LC No. 01-006558-NI

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff argues that the trial court erred in finding that no factual dispute exists regarding the nature and extent of his injuries on the issue of whether he suffered a serious impairment of a bodily function. Further, plaintiff contends that a question of fact exists regarding whether his general ability to lead a normal life has been affected, resulting in a finding that he suffered a serious impairment of a bodily function. We disagree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). In deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). Review is limited solely to the evidence that had been presented to the trial court at the time the motion was decided. *Peña v Ingham Co Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) is properly granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Rose v Nat'l Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002).

In general, the no-fault insurance act prohibits tort liability arising from the use of a motor vehicle. MCL 500.3135(3). However, MCL 500.3135(1) sets a threshold for obtaining non-economic loss allowing an action for damages to be maintained if it results in "serious impairment of body function." *Jackson v Nelson*, 252 Mich App 643, 644; 654 NW2d 604 (2002). The phrase "serious impairment of a body function" is statutorily 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.” MCL 500.3135(7); *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

A “serious impairment of a body function” has three factors: (1) there must be an objectively manifested impairment; (2) the impairment must be of an important body function; and (3) the impairment must affect a person's general ability to lead his normal life. *Kreiner v Fischer (On Remand)*, 256 Mich App 680, 685; ___ NW2d ___ (2003). Defining the first factor, an objectively manifested impairment is one that is a medically identifiable injury or condition that has a physical basis. *Jackson, supra*, 252 Mich App 653. Next, factors in determining whether an injury impairs an important body function include the extent of the injury, treatment required, duration of the disability, extent of residual impairment, and prognosis for eventual recovery. *Kern, supra*, 240 Mich App 341. Finally, while a *serious* effect from the injury is not required, it cannot be simply *any* effect. *Kreiner v Fischer*, 468 Mich 884, 885; 661 NW2d 234 (2003). It must be an effect on one’s general ability to lead his normal life. *Id.* The extent of the injury is determined by comparing one’s lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000). An injury does not need to be permanent to be considered serious. *Kern, supra*, 240 Mich App 341.

The threshold requirement for a serious impairment is encompassed in the following standard:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the 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. [MCL 500.3135(2)(a).]

Thus, the Legislature has returned the determination of whether a threshold injury exists to the trial court. *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001). Whether plaintiff suffered a serious impairment of body function should be submitted to the jury only when the trial court determines that an “outcome-determinative genuine factual dispute” exists. *Id.*, citing *Kern, supra*, 240 Mich App 341.

Plaintiff argues that the trial court should have submitted the threshold determination to the jury because genuine questions of material fact exist regarding the nature and extent of plaintiff’s injuries. In *Kern*, this Court found that where there was no independent medical examination, the only testimony came from plaintiff, plaintiff’s parents, and his treating physician, and there were no material discrepancies of fact therein, the court should have ruled on the threshold issue as a matter of law. *Kern, supra*, 240 Mich App 343-344. In this case, defendant did not dispute any of the medical records or testimony, all of which was submitted by

plaintiff and plaintiff's doctors. Defendant did not seek an independent medical examination. Defendant did not disagree with any of plaintiff's testimony, doctors, or records, which independently contained no material discrepancies of fact. Therefore, there is no dispute about the nature and extent of plaintiff's injuries and the court rightly determined the threshold issue as a matter of law.

Further, the court properly decided that summary disposition was appropriate because plaintiff's injuries did not meet the threshold for a serious impairment of a body function since his general ability to lead a normal life was not affected. To determine if plaintiff's injury meets the threshold, it should be examined under the three-part test laid out in *Kreiner, supra*, 256 Mich App 680.

First, plaintiff had a medically identifiable injury of a fractured fibula as diagnosed through x-ray, making the injury objectively manifested. Next, the injury did affect an important body function. Here, plaintiff walked into the emergency room where he was found to have full range of motion and 5/5 strength in his left ankle, while x-rays showed a fractured fibula. He was put in a knee immobilizer and told to limit weight bearing until a follow up visit. However, within three days plaintiff was told that he no longer had to wear any type of support for his injury and could put weight on it as tolerated. He was restricted from working for the first three weeks, though records show that plaintiff was not employed during this time. Within seven weeks he was completely cleared to participate in all activities and no further treatment was recommended. The ankle sprains that plaintiff described months later were not contested by defendant as resulting from the injury, despite the history of ankle sprains plaintiff reported during his emergency room visit after the collision. The extent of the injury, treatment required, duration of the disability, extent of residual impairment, and prognosis for recovery did rise to the level of an important body function. Further, the Supreme Court has previously found that "walking is an important bodily function." *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982). Plaintiff's injury thus was objectively manifested and affected an important body function.

Plaintiff's injury did not, however, overcome the threshold because it did not seriously affect his general ability to lead his normal life. When looking at one's general ability to lead a normal life, "the focus must be on multiple aspects of the person's life, i.e., home life, relationships, daily activities, recreational activities, and employment, and not solely on one area of the person's life such as employment." *Kreiner, supra*, 256 Mich App 689. Here, plaintiff's ability to work was only affected for three weeks, at which time he had told Dr. Putz that he was not working. Since the accident, plaintiff has worked both as a painter's helper and siding houses. Despite the sprained ankle, plaintiff was told that he could continue working and has not had any physician-imposed restrictions beyond the first three weeks. Dr. Putz, plaintiff's own treating physician, testified that an injury of this nature takes only four to six weeks to heal.

While plaintiff states that he was unable to train for a job because of the injury, the duration of the restriction on work was minimal and does not meet the threshold for serious impairment. Plaintiff also claimed that he can no longer participate in recreational sports, but as this is only one aspect of his life and those restrictions are self-imposed, this also does not meet the threshold for a serious impairment. When comparing plaintiff's life before and after the

accident, the injury does not affect his general ability to lead a normal life. Although plaintiff sustained an objectively manifested injury and plaintiff's fibular injury affected "an important body function," plaintiff did not suffer a serious impairment of body function because his general ability to lead his normal life was not affected.

Affirmed.

/s/ David H. Sawyer

/s/ Richard Allen Griffin

/s/ Michael R. Smolenski