

STATE OF MICHIGAN
COURT OF APPEALS

MATTHEW DIXON,
Plaintiff-Appellant,

UNPUBLISHED
August 17, 2004

v

ROSALYN GIBSON,
Defendant-Appellee.

No. 245943
Wayne Circuit Court
LC No. 02-203654-NI

Before: Cavanagh, P.J., and Jansen and Saad, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order that granted defendant's motion for summary disposition,¹ and we affirm.

I. NATURE OF THE CASE

Under Michigan's no-fault automobile insurance law ("the No-Fault Act"), MCL 500.3101 *et seq.*, a plaintiff injured in an automobile accident receives compensation for his economic losses from his own insurance company. A plaintiff may not file to recover against a negligent driver for noneconomic damages (i.e., pain and suffering) unless the plaintiff "has suffered death, serious impairment of body function, or permanent serious disfigurement."² The No-Fault Act provides that "'serious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life."³ The trial court, not a jury, decides, as a matter of law, whether plaintiff suffered a "serious impairment"⁴ if either (1) there is no factual dispute with respect to the nature and extent of the plaintiff's injuries, or (2) a dispute with respect to the nature and

¹ MCR 2.116(C)(10)

² MCL 500.3135(1)

³ MCL 500.3135(7); see also *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001)

⁴ We will refer to "serious impairment of a bodily function" simply as "serious impairment" for brevity's sake.

extent of the plaintiff's injuries is not material to the question of whether the plaintiff suffered a serious impairment.⁵

Here, plaintiff suffered fractured ribs, and after a few months returned to work full time as an assistant school principal with minor physical pain associated with the fractured ribs, but without any work restrictions. Furthermore, though plaintiff testified that he is limited by some self-imposed restrictions on his recreational activities, he has continued to lead his normal life much as he did before his automobile accident. Accordingly, under our Supreme Court's interpretation of the no-fault law, the trial court correctly ruled that plaintiff's claim for noneconomic damages against defendant should be dismissed because plaintiff did not suffer a serious impairment.

II. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *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. *Id.*; *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). A court must consider affidavits, pleadings, depositions, admissions and other documentary evidence in the light most favorable to the non-moving party. Summary disposition is appropriate when the evidence shows that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Universal Underwriters Group, supra* at 720. We note that the trial court made findings of fact on the record, detailing its basis for determining the issue of serious impairment of a body function as a matter of law. Therefore, we can properly rule on whether the grant of summary disposition was appropriate. MCL 500.3135(2)(a); See also *Churchman v Rickerson*, 240 Mich App 223, 232; 611 NW2d 333 (2000); *May v Sommerfield*, 239 Mich App 197, 201-203; 607 NW2d 422 (1999), *aff'd* after remand 240 Mich App 504; 617 NW2d 920 (2000).

III. ANALYSIS

As a result of an automobile accident, plaintiff sustained fractured ribs and says that he continues to have unilateral sweating on the right side of his face, difficulty sleeping, and pain in the rib area. Plaintiff was unable to work on a full-time basis for almost two months. Though plaintiff claims that his injuries significantly altered his normal lifestyle, he returned to work full-time as an assistant principal without restrictions and he engages in normal life activities.

Under the No-Fault Act, a plaintiff may recover noneconomic damages from a negligent driver for injuries sustained in an automobile accident only if the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1); *Stephens v Dixon*, 449 Mich 531, 539; 536 NW2d 755 (1995); *Churchman, supra* at 226. The

⁵ MCL 500.3135(2)

issue of whether a plaintiff suffered a serious impairment of a body function is a question of law for the court if either of the following applies:

- (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).]

The issue of whether a plaintiff suffered a serious impairment of a body function should only be a jury question if the trial court finds the existence of an "outcome-determinative genuine factual dispute." *Miller v Purcell*, 246 Mich App 244, 247; 631 NW2d 760 (2001), quoting *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). Therefore, if a factual dispute exists, but is immaterial to a determination of whether a plaintiff suffered a serious impairment of a body function, then the trial court must determine the threshold issue as a matter of law. MCL 500.3135(2); See also *Miller, supra* at 247-249; *Kern, supra* at 341-342.

To prove a serious impairment, plaintiff must prove that he sustained an objectively manifested injury of an important body function that impacts a plaintiff's general ability to lead his or her normal life. MCL 500.3135(7); *Miller, supra* at 247. To determine the nature of a plaintiff's injuries, the trial court must determine if a factual dispute exists regarding whether a plaintiff has an objectively manifested impairment of an important body function. *Kreiner v Fischer*, ___ Mich ___; ___ NW2d ___ (2004). According to *Kreiner*, impairment of an unimportant body function does not meet this requirement. *Id.* Similarly, if an important body function has been injured but not impaired, this requirement is not met. *Id.* The impairment must be medically identifiable or have a physical basis. *Id.*; see also *Jackson, supra* at 653. "Subjective complaints that are not medically documented are insufficient." *Id.*

If a court determines that an injury constitutes an objective manifestation of serious impairment, then it must then determine whether the impairment "affects the plaintiff's general ability to lead a normal life." *Kreiner, supra* at ___. The trial court must objectively compare the plaintiff's lifestyle and activities before the accident to his lifestyle and activities after the accident to determine whether a plaintiff's general ability to lead a normal life has been affected. *Id.* at ___. "Merely 'any effect' on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his life." *Id.* The injury need not be lengthy or permanent to amount to a serious impairment of body function. *Kern, supra*, 240 Mich App 341. However, the mere fact that an impairment exists for a long period of time "does not necessarily mandate a finding" of a serious impairment. *Kriener, supra* at ___.

In *Kreiner*, our Supreme Court provided a "nonexhaustive list" of objective factors that a court can use to determine whether a plaintiff's ability to lead his general life has been affected. *Kreiner, supra* at ___. These factors include: "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment and (e) the prognosis for eventual recovery." *Id.* The Court stressed

that these factors are “not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves.” *Id.*

Plaintiff sustained superficial contusions and fractures to four ribs, for which he spent six days in the hospital on intravenous pain medication. Plaintiff says that he continues to have difficulty breathing, problems sleeping, pain and discomfort in the rib area and unilateral sweating on the right side of his face. Plaintiff also says that he was unable to work for approximately one month. When he returned to work, plaintiff worked half-days for approximately one month. Plaintiff then returned to his full-time employment schedule and regular work functions. He also contends that he has pain and discomfort when performing work-related tasks. Plaintiff also says that, since the accident, he has been unable to participate in riding his exercise bike and exercising at Bally’s Fitness, unable to play golf and tennis, and unable to assist his daughter with volleyball practices. Plaintiff says that he no longer performs household duties as often as he did prior to the accident, but he continues to mow the lawn, despite getting tired.

Although plaintiff presents evidence of ongoing discomfort and difficulty sleeping, these are minor changes and do not satisfy the no-fault threshold. See *Miller, supra* at 245, 249-250; *Kern, supra* at 343-344. The evidence shows that the only changes to plaintiff’s activities are self-imposed restrictions of his prior recreational activities. Our Supreme Court stated that “self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain” are not sufficient to establish a residual impairment for the purposes of determining whether plaintiff’s ability to lead his general life has been affected. *Kreiner, supra* at ___ n 17. Importantly, plaintiff’s medical evaluation confirmed that he can return to all normal work and household activities without restrictions. Indeed, plaintiff admitted that his personal doctor did not place any restrictions on any of his normal, daily activities.

We conclude that there is no genuine issue of material fact regarding the nature of plaintiff’s injuries. While a factual dispute exists regarding the extent of plaintiff’s injuries, we conclude that the disputed facts are immaterial because they are irrelevant to a determination of whether plaintiff suffered a serious impairment of a body function. We hold that the trial court properly granted defendant’s motion for summary disposition because plaintiff failed to prove his injuries impacted his general ability to lead his normal life.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Henry William Saad