

STATE OF MICHIGAN
COURT OF APPEALS

RICARDO GALVAN,

Plaintiff-Appellant,

v

DMITIRI FEDOROVICH CHERKASOV,
RHONDA JOY GINGERICH, and LUKE
GINGERICH,

Defendants-Appellees.

UNPUBLISHED
September 14, 2004

No. 247070
Grand Traverse Circuit Court
LC No. 02-022145-NI

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition in this third party no-fault insurance action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On August 6, 2001, a van driven by defendant Cherkasov and owned by the Gingerich defendants struck plaintiff while he was working at a highway construction site. He brought this action to recover damages for the injuries he sustained. The trial court granted defendants' motion for summary disposition, finding that plaintiff's injuries did not meet the serious impairment of body function threshold for noneconomic damages.

Following the accident plaintiff went to the emergency room for relatively minor injuries. The areas of interest were the right shoulder, right hip, and left knee. All areas exhibited full range of motion, minimal symptoms, and negative x-rays. He was given Tylenol and released to return to work the same day with restrictions. Two days later he saw his family physician who noted some bruising and abrasions that were in healing and complaint of pain in the left knee, right shoulder, and right thigh. Rehabilitation was prescribed, MRI of the left knee was taken, disability continued, and a return visit scheduled for September 12, 2001. At the five week post-accident visit, the MRI of the left knee was normal. Although he complained of left knee pain, plaintiff was able to perform all activities required of him. The physical examination showed the knee to be normal and his physician found no objective basis for plaintiff's complaints. Given the fact that the knee was sound, the physician wanted to push plaintiff's treatment in hope of a return to work in two weeks. Two weeks later, plaintiff's physician noted that after one month of therapy plaintiff was moving without difficulty and plaintiff was returned to work at full activity.

On November 1, 2001, plaintiff sought the advice of an orthopedic surgeon. He had returned to full time unrestricted construction work but complained of swelling and pain at days end. The physical examination was unremarkable except for the complaint of pain. Plaintiff had full range of motion, no significant joint tenderness or laxity of the knee, and no evidence of any meniscal pathology. The MRI was suggestive of a strain. He was prescribed Celebrex with a return as needed basis. On August 20, 2002, nearly a year post accident, plaintiff, because of continued subjective knee complaint, had a diagnostic videoarthroscopy of the left knee. The knee was completely normal and plaintiff was returned to work without restriction. There were no objective manifestations of injury or impairment. Medical attention ended.

Plaintiff complained of pain and limitations at work, at home, and at play. He self-restricted his activities. Except for the initial treatment, no physician restricted plaintiff from any activities. The subjective complaints of pain could not be explained and went unexplained.

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich App 109; 597 NW2d 817 (1999). In evaluating the motion, the court considers the evidence submitted by the parties in a light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

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 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. MCL 500.3135(2)(a).

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. *May v Sommerfield*, 239 Mich App 197, 202-203; 607 NW2d 422 (1999). The court is required to make appropriate findings whether the plaintiff has an objectively manifested injury, whether an important body function is impaired, and whether that impairment affects the plaintiff's general ability to lead her normal life. *Id.*

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. *Kreiner v Fischer*, ___ Mich ___ ; 683 NW2d 611 (Docket Nos. 124120, 124757, rel'd July 23, 2004, slip op 16-18); *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001).

In order for an impairment to be objectively manifested, there must be a medically identified injury or condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). The objectively manifested injury plaintiff sustained was a suggestive strain to the knee as reflected by the MRI results only, but a knee injury or impairment was neither physically nor clinically manifested on examination. Further, there was no evidence that this injury affected plaintiff's general ability to lead his normal life. All of the medical evidence indicated that plaintiff's knee was normal. Plaintiff supplied no medical or

other factual support for his alleged serious impairment. The trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot