

STATE OF MICHIGAN
COURT OF APPEALS

JERRY VANORDER,

Plaintiff-Appellant,

v

MARGARET GROSS, Personal Representative of
the Estate of FRED LEO GROSS, Deceased,

Defendant-Appellee.

UNPUBLISHED

April 7, 2005

No. 251202

Saginaw Circuit Court

LC No. 02-044765-NI

Before: Markey, P.J., and Murphy and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting defendant’s motion for summary disposition. We affirm.

Plaintiff argues that the trial court erred when it determined that plaintiff did not meet the statutory requirements for an actionable closed-head injury and when it determined that plaintiff did not present evidence of a serious impairment of body function. We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Under Michigan’s no fault act, a person is only liable for non-economic damages resulting from a motor vehicle accident “if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). Whether a plaintiff has suffered a serious impairment of body function is a question of law to be decided by the trial court if there are no factual disputes about the nature and extent of the plaintiff’s injuries, or if there is a dispute but it is not material to the question of whether the plaintiff suffered a serious impairment of body function. MCL 500.3135(2)(a); *Kreiner v Fischer*, 471 Mich 109, 120; 683 NW2d 611 (2004). “However, for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury.” MCL 500.3135(2)(a)(ii).

Plaintiff argues that his psychiatrist's affidavit¹ avers that plaintiff may have suffered a serious neurological injury, and thus he has satisfied the statutory standard regarding closed-head injuries; therefore, his case must survive summary disposition. We find it unnecessary to explore this argument because plaintiff's psychiatrist testified in his deposition, held after the summary disposition hearing, that he does not regularly treat or diagnose closed-head injuries, thereby rendering the doctor unqualified under MCL 500.3135(2)(a)(ii). See *Hawker v Northern Michigan Hosp, Inc*, 164 Mich App 314, 318; 416 NW2d 428 (1987)(permitting enlargement of the record on appeal in special circumstances to avoid a useless waste of judicial time).

Plaintiff also argues that he demonstrated a serious impairment of body function independent of the controversial affidavits regarding the alleged closed-head injury. We disagree. The statute defines "serious impairment of body function" 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). In this case, plaintiff did not seek treatment for any injuries until four days after the accident, and when he did go to the emergency room, he only complained of neck and shoulder pain. The testing performed at the emergency room showed no injury, except degenerative deterioration in plaintiff's back. Other tests failed to uncover any objectively manifested injury stemming from trauma suffered during the accident. Plaintiff worked almost the entire time from the accident to the time of the summary disposition hearing, only taking a few months off following his neck surgery. Plaintiff's medical records indicated that he suffered from depression and insomnia prior to the accident, and problems with plaintiff's back and neck were undisputedly attributed to natural causes, not to the accident. Therefore, plaintiff failed to demonstrate an objective manifestation of any injury attributable to the accident. Moreover, plaintiff failed to present any evidence of how his day-to-day activities have been affected by any of his injuries, even those of natural origin. *Kreiner, supra* at 134. Therefore, the trial court did not err in granting defendant's motion for summary disposition. Because we find no error, the balance of plaintiff's issues are moot.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy

I concur in the result only.

/s/ Peter D. O'Connell

¹ The other affidavits presented by plaintiff failed to meet the standards in MCL 500.3135(2)(a)(ii).