

STATE OF MICHIGAN  
COURT OF APPEALS

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DALE BRADLEY BENNER,

Plaintiff-Appellant,

v

SALVATORE MINI,

Defendant-Appellee.

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UNPUBLISHED

June 28, 2005

No. 261138

St. Clair Circuit Court

LC No. 03-000488-NI

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant’s motion for summary disposition in this automobile negligence action. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

A person is subject to tort liability for automobile negligence if the injured person “suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). A serious impairment of body function is 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).

The trial court followed the multi-step process for evaluating a serious impairment claim established in *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004). It determined that there was no material factual dispute that would preclude it from ruling on the issue as a matter of law. It then found that the evidence was sufficient to show that plaintiff had impaired an important body function, and that the impairment was objectively manifested by an MRI. However, the trial court concluded that the plaintiff’s injuries did not affect his ability to lead his normal life. We review de novo a trial court’s ruling on a summary disposition motion. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

If an important body function has been impaired and the impairment is objectively manifested, the next question is whether the impairment affected the plaintiff’s general ability to lead his or her normal life. *Kreiner, supra* at 132. In answering this question, “a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Id.* at 132-133. Factors to consider 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.* at 133. While an injury need not be permanent, it must be of sufficient duration to affect the course of a plaintiff’s life. *Id.* at 135.

Plaintiff’s back injury proved debilitating for more than two years and never completely resolved. Plaintiff underwent several months of physical therapy, which was unsuccessful, and treated with drug therapy. As a result of the impairment, plaintiff was unable to work for eight months. He was thereafter cleared to work and, according to one doctor, restricted from “pushing, pulling, lifting, bending” and standing for long periods of time. Physician-imposed restrictions can establish residual impairment. *Id.* at 133 n 17. As a result, plaintiff became depressed, did very little, and for the most part remained in bed. He began sleeping on the floor while wearing a cervical collar to alleviate the pain. Based on such evidence, we find that there was a genuine issue of fact whether plaintiff’s injury affected his general ability to lead his normal life.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O’Connell

/s/ Stephen L. Borrello