

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND E. BEFUS, JR.,

Plaintiff-Appellant,

v

MICHAEL EUGENE SMITH and
JAMES REYNHOUT,

Defendants-Appellees.

UNPUBLISHED

August 18, 2005

No. 261467

Kent Circuit Court

LC No. 03-005095-NI

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition in this automobile negligence action. We affirm. This appeal 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 determined that plaintiff had an objectively manifested injury that impaired an important body function, but ruled that the injury was not serious.

We review a trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

In determining whether an injury was serious, the court is to compare the plaintiff's life before and after the accident and consider "the significance of any affected aspects on the course of plaintiff's overall life." *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). 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. "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 normal life." *Id.* (emphasis in original). In other words, "[a] negative effect on a particular aspect of an injured person's life is not sufficient in

itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life.” *Id.* at 137.

Plaintiff injured his shoulder in August 2002. The injury limited his movement and was painful, and the pain interrupted his sleep. An MRI revealed a torn rotator cuff. The tear was surgically repaired in December 2002, and with physical therapy, plaintiff regained full range of motion within two months. He had some residual weakness, but that also improved after another two months of therapy. Plaintiff missed only three weeks of work. As a result of residual weakness, plaintiff could not engage in certain upper body exercises, could not carry luggage or do construction work on his annual or semi-annual mission trips, and could not do some maintenance work at home and at church. Given that plaintiff’s injury was not extensive and was repaired with surgery, that his recuperation was short and unremarkable, and that the effect of the injury on his body function was not pervasive and caused only minor disruption of his activities, we conclude that the trial court did not err in concluding that the injury was not serious.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens