

STATE OF MICHIGAN  
COURT OF APPEALS

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JOSEPH SWICK,

Plaintiff-Appellant,

v

ANGELA CAM OKORN,

Defendant-Appellee.

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UNPUBLISHED  
November 1, 2005

No. 263478  
Oakland Circuit Court  
LC No. 2004-060934-NI

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

In this action to recover third-party noneconomic damages under the no-fault act, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. Plaintiff challenges the trial court's determination that he failed to show that his injuries affected his general ability to lead his normal life, as is necessary to establish a serious impairment of body function under MCL 500.3135(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). "[S]erious 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." MCL 500.3135(7). To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person's entire normal life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004).

We agree with the trial court that the admissible evidence<sup>1</sup> did not create a genuine issue of material fact whether plaintiff's injuries affected his general ability to lead his normal life.

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<sup>1</sup> We consider only the evidence that was submitted to the trial court before the court granted defendant's motion for summary disposition. See *Maiden v Rozwood*, 461 Mich 109, 126 n 9, 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 366 n 5; 547 NW2d 314 (1996). The only admissible evidence submitted to the trial court as to the impact the injury had on plaintiff's general ability to lead his normal life was certain medical records regarding the

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Following his accident in October 2003, plaintiff did not work from December 2003 until August 2004. He had surgery on his cervical spine in March 2004. The strongest evidence supporting plaintiff's claim of residual impairment concerns the change in his ability to perform his job duties. The injury affected his employment, inasmuch as he was restricted from climbing ladders and working on roofs, and his job duties in sales and providing estimates for masonry work included those activities. There was minimal evidence indicating that the injury had some impact plaintiff's his ability to engage in some recreational activities. However, the evidence did not establish that these activities were important in his life before the accident. *Kreiner, supra* at 134, n 19; Cf. *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005); *McDaniel v Hemker*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 263150, issued September 27, 2005), slip op at 3. In addition, many of the restrictions on recreational activities were apparently self-imposed; plaintiff's physician only restricted plaintiff from "strenuous or dangerous activities, including contact sports, extreme flexion of the neck, climbing on ladders, and working on roofs." Although self-imposed restrictions do not establish a residual impairment, this Court may consider changes in activities that are consistent with a physician's observation of limited movement. See *Williams, supra*. But here, the surgeon noted that "flexion and extension cervical x-rays today appear[ed] satisfactory" following surgery. Despite plaintiff's inability to work for seven months and his inability to work to full capacity when he resumed work, he was generally able to lead his normal life. Cf. *Kreiner, supra* at 137.

To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person's entire normal life. *Kreiner, supra* at 130-131. The trial court correctly determined that the threshold was not met in this case.

Affirmed.

/s/ Hilda R. Gage  
/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray

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(...continued)

extent of his injury and his restrictions, and plaintiff's deposition testimony about the work restrictions resulting from the accident.