

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY LEE PINGLE,

Plaintiff-Appellant,

v

PAMELA DAWN POWERS and PAUL
BENJAMIN POWERS,

Defendants-Appellees.

UNPUBLISHED

November 10, 2005

No. 263714

Macomb Circuit Court

LC No. 04-002937-NI

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On October 13, 2003, plaintiff's vehicle was stopped at a red light when it was struck from the rear by a vehicle driven by Pamela Powers and owned by Paul Powers. X-rays taken of plaintiff's spine showed only degenerative changes. Thereafter, plaintiff consulted with physicians for thoracic strain and carpal tunnel syndrome, and underwent physical therapy. One physician with whom plaintiff treated attributed his condition to the accident, while two independent medical examiners reached the opposite conclusion. In early 2005, plaintiff underwent nerve decompression surgery on both elbows.

Plaintiff filed suit alleging that the injuries he sustained in the accident constituted a serious impairment of body function. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff's soft tissue injuries did not constitute a serious impairment of an important body function, and that at any rate, plaintiff's injuries did not affect his general ability to lead his normal life. The trial court granted the motion, concluding that while there appeared to be some dispute regarding the nature and extent of plaintiff's injuries, it could decide the matter as one of law because no evidence showed that any injuries plaintiff sustained affected his general ability to lead his normal life.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A serious impairment of body function is “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). For an impairment to be objectively manifested, there must be a medically identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a). Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course of the person’s life. The court must examine how, to what extent, and for how long the plaintiff’s life has been affected by the impairment. The court must examine the plaintiff’s life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff’s life. In order to determine whether the plaintiff’s general ability to lead his or her normal life has been affected by the objective impairment, the court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Kreiner v Fischer*, 471 Mich 109, 131-134; 683 NW2d 611 (2004).

We reverse the trial court’s decision and remand for further proceedings. An objectively manifested impairment consists of a medically identifiable injury or a condition that has a physical basis. *Jackson, supra*. Following the accident, x-rays showed the presence of thoracic disc protrusions, and an EMG showed the presence of carpal tunnel syndrome. These conditions were objectively manifested. *Id.* The ability to use one’s back and arms are important body functions. *Kreiner, supra* at 134-137; *Chumley v Chrysler Corp*, 156 Mich App 474, 481-482; 401 NW2d 879 (1986).

A dispute existed regarding the nature and extent of plaintiff’s injuries; however, the trial court granted defendants’ motion for summary disposition based on its conclusion that no evidence created a question of fact as to whether plaintiff’s injuries affected his general ability to lead his normal life. We conclude that the trial court erred in so finding. Plaintiff asserted that his injuries prevented him from working as a painter and from engaging in sporting activities, but he acknowledged that no physician placed any restrictions on his employment or recreational activities,¹ and that his restrictions were self-imposed. Self-imposed restrictions based upon real or perceived pain do not constitute evidence of a serious impairment of body function. *Kreiner, supra* at 133 n 17. In *McDaniels v Hemker*, 268 Mich App ___; ___ NW2d ___ (Docket No. 263150, issued 9/27/05), this Court pointed out that a self-imposed restriction based on something other than pain, such as physical incapacity, may establish the existence of a serious

¹ The reports prepared by the physician who performed surgery on plaintiff’s elbows do not indicate that plaintiff was placed under any work restrictions following the surgeries.

impairment of body function. *Id.*, slip op at 8. Plaintiff testified that after the accident he could no longer work as a painter because the physical activities required by that occupation, i.e., holding brushes and moving his arms, caused his upper extremities to become numb. Thus, although plaintiff had no physician-imposed restrictions on his employment activities, he presented evidence that a physical incapacity prevented him from working. Under *McDaniel*, *supra*, the presentation of such evidence is sufficient to create a question of fact regarding the existence of a serious impairment of body function. The trial court erred in granting defendants' motion for summary disposition. MCL 500.3135(2)(a).

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

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter