STATE OF MICHIGAN

COURT OF APPEALS

RODGER G. WALTZ,

Plaintiff-Appellant,

v

TIMOTHY M. STOREY and MEGAN STOREY,

Defendants-Appellees.

UNPUBLISHED
January 24, 2006

No. 265145
Monroe Circuit Court
LC No. 04-018331-NI

Before: Sawyer, P.J., and Wilder and H. Hood*, JJ.

PER CURIAM.

Plaintiff, Rodger G. Waltz, appeals as of right the trial court order granting summary disposition in favor of defendants, Timothy M. Storey and Megan Storey. We affirm.

In October 2003, plaintiff and defendant Timothy Storey were involved in a head-on automobile collision in Monroe. At the time, plaintiff was 65 years old. He had been receiving social security disability insurance benefits since October 1989 due to severe scoliosis and degenerative arthritis of the lumbar spine. Following the 2003 accident, plaintiff complained of pain in his lower back, knees, and legs. Although plaintiff obtained some relief from epidural steroid injections, it was only temporary. He did not participate in physical therapy, and he is not a candidate for surgery. Plaintiff claims that the accident exacerbated or aggravated his existing condition and pain. Plaintiff also asserts that the pain has restricted him as follows: 1) he requires a cane to walk and cannot walk long distances; 2) he requires assistance to fully complete certain household tasks, such as cleaning the floors, laundry, and cooking; 3) he requires a device to put on his socks and is unable to tie his shoelaces; 4) he no longer hunts or fishes as often; 5) he no longer shops or visit friends; and 6) he sleeps poorly and can only lay in one position.

Plaintiff argues that the trial court erred in granting summary disposition and in finding that his injury did not affect his general ability to lead his normal life under Michigan's no-fault act, MCL 500.3101 *et seq*. We review de novo a trial court's decision on a motion for summary disposition. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). When reviewing a decision on a motion for summary disposition pursuant to MCR 2.116(C)(10), "we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Rose,*

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

supra at 461. Summary disposition is appropriately granted, "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

This appeal concerns the threshold question whether plaintiff suffered a serious impairment of a body function. Such impairment (1) must be objectively manifested, (2) must be of an important body function, and (3) must affect the plaintiff's ability to lead his normal life. MCL 500.3135(7). It is well documented and objectively manifested that plaintiff has experienced pain in his lower back, knees, and legs since the accident. We view the evidence in the light most favorable to plaintiff. *Rose, supra* at 461. Although the parties dispute whether the increased pain is caused by the accident or plaintiff's pre-existing conditions,[1] this dispute is not material to determining whether plaintiff suffered a serious impairment of a body function. Whether plaintiff has suffered a serious impairment of a body function is therefore a question of law. MCL 500.3135(2); *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004).

Walking is an important body function, *Kern v Blethen-Coluni*, 240 Mich App 333, 343; 612 NW2d 838 (2000), and a medically documented injury to the lower back or leg constitutes an impairment of an important body function, *Kreiner, supra* at 136. In determining whether any difference in the plaintiff's pre- and post-accident lifestyle affected his general ability to conduct the course of his life, we consider the following nonexhaustive list of objective factors: "(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." *Kreiner, supra* at 133 (footnotes omitted). None of these factors is dispositive; we must consider the totality of the circumstances. *Id*. at 133-134. We examine specific activities, being mindful that not all activities have the same significance in one's overall life and that minor changes in one's performance of a certain activity may not change the fact that he is still generally able to perform the activity. *Id.* at 131.

Plaintiff suffered significant pain before the accident, and his current impairment is the aggravation or exacerbation of an existing condition and pain, the extent of which is difficult to quantify. He received several epidural steroid injections, which provided only temporary relief. While the preexisting conditions are permanent without a prognosis for recovery, the duration of any aggravation is difficult to predict, but likely long-term or permanent. However, self-imposed, rather than physician-imposed, restrictions based on pain are not sufficient to establish residual impairment. *Kreiner, supra* at 133 n 17; *McDanield v Hemker*, ___ Mich App ___; ___ NW2d ___ (2005), slip op, p 8. Plaintiff has presented no evidence that the restrictions on his hunting, fishing, shopping, or socializing activities are anything other than self-imposed. In 1990, plaintiff complained to doctors at the coordinated chronic pain program of the University of Michigan that he was no longer able to hunt or fish because of his back pain. At that time, he was also walking with a cane and was frustrated with his inability to complete household activities. He also complained of his inability to sleep well.

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[1] We note that, regardless of a plaintiff's preexisting conditions, recovery is permitted if the plaintiff can show that the accident triggered his symptoms. *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000).

Since the accident, plaintiff was able to go fishing four times and deer hunting once, although he testified at his deposition that he has discontinued these activities. However, he admitted that he is still able to hunt small game, drive his own vehicle, cook, clean his apartment except the floors, do his own grocery shopping, and wash half his laundry. While we acknowledge that some aspects of plaintiff's entire normal life may be interrupted by the aggravation or exacerbation of symptoms, we conclude that the course or trajectory of his normal life has not been affected by these slight changes. Therefore, his general ability to lead his normal life has not been affected and he does not meet the serious impairment of body function threshold. *Kreiner, supra* at 131.

Plaintiff also contends that the trial court engaged in fact finding in considering defendants' motion for summary disposition, thereby depriving him of his right to a jury trial. Plaintiff is correct that a trial court may not make findings of fact or determinations of credibility when deciding a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005). However, plaintiff neither identifies any fact finding by the trial court nor develops this argument in any meaningful way. His failure to properly address the merits of this assertion of error constitutes abandonment of the issue. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004).

Affirmed.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder
/s/ Harold Hood