STATE OF MICHIGAN

COURT OF APPEALS

SHAKER JEBOURY,

Plaintiff-Appellant,

v

ALI ALSAMARI and ODAJ ALSAMARI,

Defendants-Appellees,

and

IDELLA BRANCH,

Defendant.

UNPUBLISHED
January 31, 2006

No. 264678
Wayne Circuit Court
LC No. 04-416394-NI

Before: Cavanagh, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action to recover noneconomic damages under the no-fault insurance act, MCL 500.3101 *et seq.*, plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

I. Basic Facts and Procedural History

In November 2002 plaintiff was involved in a low-to-medium impact motor vehicle accident involving defendants. At the time of the accident plaintiff was receiving social security disability benefits and was being treated for multiple medical problems and psychiatric disorders, including low back pain and depression, purportedly stemming from physical and mental abuse suffered by plaintiff while a prisoner of war in Iraq.[1] Shortly after the accident plaintiff began to complain of persistent, radiating pains throughout the areas of his neck, lower back, hips, and legs. X-rays taken approximately one month after the accident revealed "degenerative changes" in plaintiff's cervical and lumbosacral spine, which were concluded by Dr. Harvey Wilner to be

[1] As a result of these maladies, plaintiff has received social security disability benefits since emigrating from Iraq in September 2000.

the result of osteoarthritic disease. The following month Dr. Salahuddin Ahmad diagnosed plaintiff as suffering from "cervical, lumbar radiculitis with radiculopathy," for which Ahmad restricted plaintiff's household activities and prescribed pain medication and physical therapy. Plaintiff continued to complain of severe, activity-limiting pain over the course of the next year and, after magnetic resonance imaging (MRI) performed in April 2004 revealed disc herniations in his cervical and lumbosacral spine, filed the instant suit alleging negligence by defendant resulting in a serious impairment of body function.

Plaintiff was thereafter examined by orthopedic surgeon Dr. Hassan Hammoud, who concluded that plaintiff's symptomology over the previous year-and-a-half was the direct result of the November 2002 motor vehicle accident involving defendant. Hammoud further concluded that as a result of his symptomology plaintiff was in need of "help" with such household duties as laundry, taking out the trash, meal preparation, and yard work. However, following an independent medical examination orthopedic surgeon Dr. Dale Hoekstra concluded that although there may have been some significant, temporary exacerbation of plaintiff's symptomology as a result of the November 2002 motor vehicle accident, plaintiff's current symptomology was reflective of pre-existing degenerative changes in his cervical and lumbar spine, rather than any "organic pathology." Hoekstra further disagreed that plaintiff was in need household services, concluding that his "subjective symptoms far outweigh [the] objective physical findings and are more consistent with depression and symptom embellishment than . . . organic disease."

Defendant thereafter moved for summary disposition, arguing that because plaintiff's medical history showed only degenerative changes during the year-and-a-half following the accident, which Dr. Hoekstra indicated did not require restricted activity, the evidence of record was insufficient to create a genuine issue of material fact regarding whether plaintiff had sustained the serious impairment of body function required by MCL 500.3135 for recovery of noneconomic damages. In response, plaintiff argued that the varying opinions concerning the nature and extent of his injuries created a factual dispute precluding summary disposition. The trial court concluded that the record was sufficient to support that plaintiff had suffered an objectively manifested impairment of an important body function, but found the "real question" to be whether that impairment affects plaintiff's ability to lead a normal life. Noting that plaintiff suffered from a number of disabling physical and mental problems before the accident, the trial court concluded that Hammoud's recommendation that plaintiff receive assistance with household chores was insufficient to show any material change in his life following the accident. Consequently, the trial court granted summary disposition in favor of defendant.

II. Analysis

Plaintiff argues that the trial court erred in ruling that although plaintiff suffered an objectively manifested impairment of an important body function, he did not meet the no-fault threshold because his impairment does not affect his ability to lead a normal life. We disagree.

This Court reviews de novo the grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Williams v Medukas*, 266 Mich App 505, 507; 702 NW2d 667 (2005), citing *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim and must be supported by affidavits, pleadings, depositions, admissions, or other documentary evidence. *Wiliams*, *supra*. Where the proffered evidence, when viewed in a light

most favorable to the party opposing the motion, fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id*.; see also MCR 2.116(G)(4).

A plaintiff may recover noneconomic damages under the no-fault act only where he 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). 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 the determination whether plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a). Because the record fails to demonstrate that the impairment at issue here has affected plaintiff's ability to lead his normal life, we are satisfied that any factual dispute regarding the nature and extent of plaintiff's injuries is not material to the determination whether he has suffered a serious impairment of body function. Accordingly, it is proper to determine whether he sustained a serious impairment of body function as a matter of law. MCL 500.3135(2)(a)(i); see also *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004).

To meet this requisite threshold, the impairment of an important body function must affect the course or trajectory of the person's entire normal life. *Kreiner*, *supra* at 130-131. In determining whether the course of a person's normal life has been affected, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Id*. at 132-133. In doing so, the court may consider factors such as the nature and extent of 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. *Id*. at 133. No one factor, however, is dispositive. *Id*. at 133-134. Rather, in determining whether one has suffered a serious impairment of body function, "the totality of the circumstances must be considered," with the ultimate question to be answered being "whether the impairment 'affects the person's ability to conduct the course of his or her normal life.'" *Id*. at 134.

Here, plaintiff offered only limited evidence concerning his life before the accident, testifying during deposition that he previously enjoyed such activities as shopping and walking, and could cook and clean for himself. Although plaintiff further testified that he no longer participates in these activities, he offered no evidence concerning the extent to which he participated in these activities before the accident. Also absent is any evidence indicating a prognosis for eventual recovery. It was incumbent upon plaintiff to produce such evidence in the face of defendants' motion for summary disposition, see *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996), and, absent such evidence, the record simply does not demonstrate a change in the course or trajectory of plaintiff's "preimpairment life" sufficient to meet the serious impairment threshold, *Kreiner*, *supra* at 136. This remains true despite the restrictions on household activity imposed by plaintiff's doctors. Indeed, as held by the Court in *Kreiner*, *supra* at 131, "[a]lthough some aspects of a plaintiff's entire normal life may be interrupted by [an] impairment, if, despite those impingements, the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his

normal life has not been affected and he does not meet the 'serious impairment of body function' threshold." Of importance to this determination is "the significance of any affected aspects on the course of the plaintiff's overall life." *Id*. at 132. Because the record before us, which includes evidence of physical and mental disabilities pre-existing the impairment at issue, is insufficient to demonstrate any significant post-impairment change in the course or trajectory of plaintiff's life, summary disposition in favor of defendants was proper.[2]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

[2] Because our review is de novo, *Kreiner*, *supra* at 129, we reject plaintiff's assertion that the trial court's failure to render fact-specific findings regarding the affect of plaintiff's impairment on the course of his life requires remand of this matter. See also *Kern v Blethen-Coluni*, 240 Mich App 333, 344 n 3; 612 NW2d 838 (2000).