

STATE OF MICHIGAN
COURT OF APPEALS

JAMES WILLIAM WOHLSCHEID, SR.,

Plaintiff-Appellant,

v

RALPH WARREN RAYMER,

Defendant-Appellee.

UNPUBLISHED

May 2, 2006

No. 260033

Ingham Circuit Court

LC No. 03-001454-NO

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In this action to recover noneconomic damages from a third party under the no-fault act, plaintiff appeals from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff challenges the trial court's determination that he failed to show either an objectively manifested impairment or that his injuries affected his general ability to lead his normal life, as is necessary to establish a serious impairment of body function. MCL 500.3135(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews de novo the trial court's order granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

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). The issue of whether a person has suffered a serious impairment of body function is a question of law for the trial court to decide if the court determines that there is no factual dispute concerning the nature and extent of the person's injuries or that there is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a). "[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). The standard for recovery of noneconomic damages is not predicated on serious pain and suffering, but on injuries that affect the functioning of the body. *Miller v Purcell*, 246 Mich App 244, 249; 631 NW2d 760 (2001). 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). 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. Even where there are minor changes in how the person performs an activity, a person may generally be able to continue performing that activity. *Id.* at 131.

Plaintiff contended that he suffered a serious impairment of body function due to injuries to his shoulder and back in a motor vehicle accident that occurred on May 29, 2001.

Plaintiff, age 63, explained in his deposition that because of the pain in his back, he was no longer able to rollerblade and fast dance. He continued his hobby of woodworking and crafts. He still attended shows, although he required assistance in setting up for the shows. He was able to drive, dress, and bathe himself, perform household chores including doing dishes and washing clothes. He mowed his own lawn with a push mower. He shoveled snow, although it was "extremely painful."

Before the accident, plaintiff worked in die repair and machine maintenance. After the accident on May 29, 2001, he did not miss any work immediately. He missed the month of July 2001 and returned in August 2001. He was off work again from April 24 to August 26, 2002, while he recovered from shoulder surgery. According to plaintiff, Dr. Flood restricted him from work beginning in June 2003, because his back hurt.¹ Plaintiff did not return to work. He was terminated from his job on September 9, 2003, because his employer did not want to extend his leave of absence "due to current business conditions." Plaintiff intended to retire at age 65 if possible.

At his deposition in January 2004, plaintiff testified that he had not sought any other employment, but indicated that his decision not to pursue employment was not based on a doctor's restriction:

Q. Have any of your physicians, Dr. Flood, or any of the others, told you that you are permanently disabled?

A. I haven't heard as to that effect.

Q. Have you heard something less than that; in other words, are you currently not seeking employment because of doctors['] orders, or is it because you feel you can't?

A. I feel I can't work.

¹ The medical records include a June 24, 2003, letter from Dr. Kribs stating that plaintiff was off work for six weeks.

Although plaintiff stated that he did not engage in all of the recreational activities that he did before the accident, there was no evidence that a physician restricted him from these activities. Self-imposed restrictions do not establish residual impairment. *Kreiner, supra* at 133 n 17; *McDaniel v Hemker*, 268 Mich App 269, 282-285; 707 NW2d 211 (2005). “[T]he extent of this residual impairment cannot be proven by way of self-imposed restrictions based on real or perceived pain. Stated differently, [plaintiff] cannot establish the extent of [his] residual impairment by merely claiming that [he] has restricted [himself] from engaging in activities or making certain movements because [he] experiences pain.” *Id.* at 283. Similarly, plaintiff’s decision not to seek employment after he was discharged was essentially a self-imposed restriction based on pain, and for that reason is inadequate to establish residual impairment. The records include references to physician-imposed work restrictions, but only for limited periods of time.

Residual impairment is not essential to establishing a threshold injury. Rather, “an impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff’s life is extensive.” *Williams v Medukas*, 266 Mich App 505, 508; 702 NW2d 667 (2005). The period during which plaintiff recovered from arthroscopic surgery to his shoulder may have provided a basis for plaintiff to argue for an impairment of short duration that nevertheless met the statutory threshold. The discharge summary report indicates that he was placed in a shoulder immobilizer and would remain in it for four weeks before beginning physical therapy. It further indicates that the doctor anticipated work restrictions for four to six months. However, plaintiff did not present any evidence concerning his condition and circumstances during that period of recuperation. Thus, there is no basis for concluding that the impairment during this period of recuperation had an extensive effect on plaintiff’s life.

Because the evidence failed to show that the impairment affected plaintiff’s general ability to conduct the course of his normal life, a factual dispute concerning the nature and extent of his injuries is not material to the determination whether he suffered a serious impairment of body function. *Kreiner, supra* at 136 n 21. Summary disposition was properly granted in favor of defendant.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot