

STATE OF MICHIGAN
COURT OF APPEALS

NORMAN BOOKER, SR.,

Plaintiff-Appellant,

v

JOHN DAVID BECK,

Defendant,

and

DORIS MARIE SHERMAN,

Defendant-Appellee.

UNPUBLISHED

May 11, 2006

No. 258904

Allegan Circuit Court

LC No. 03-033981-NI

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's¹ motion for summary disposition under MCR 2.116(C)(10), based on a finding that plaintiff did not suffer a serious impairment of body function under MCL 500.3135. We affirm.

Plaintiff, as an unrestrained passenger, was injured in an automobile accident in September 2001. Plaintiff, sixty-six at the time of the accident, retired in 2000 after suffering a stroke, from which he was recovering well. The accident was caused when the driver of a car owned by defendant turned in front of plaintiff's pickup truck. Plaintiff's wife, who was driving the truck, was unable to avoid hitting the car. The impact caused plaintiff to strike his head on the windshield. As a result of his injuries, plaintiff has suffered from persistent neck and shoulder pain. Two months after the accident, his primary care physician found that his range of motion in his neck was quite limited and instructed him to wear a cervical collar. An x-ray showed moderately severe degenerative changes in the cervical spine, and his physician diagnosed him with cervical disc disease. Over time, his pain improved somewhat and he continued to use the cervical collar occasionally as well as a cervical traction device.

¹ The term "defendant" in this opinion refers to Doris Marie Sherman.

Despite treatment, plaintiff's pain persisted. In November 2002, his physician attributed his continuing neck pain to cervical disc disease and arthritis. Plaintiff consulted with another doctor, who took x-rays that confirmed degenerative changes to the spine. That doctor diagnosed plaintiff as having accident-related injuries that included aggravation of osteoarthritis of the cervical and lumbar spine. He certified that plaintiff was disabled from doing housework that involved bending, lifting, twisting, and prolonged sitting.

Plaintiff also consulted a physical therapist, who recommended a therapeutic exercise program to increase plaintiff's strength and range of motion in the neck and shoulder. After his family physician referred him to an orthopedic specialist, plaintiff had an MRI in January 2003 that showed foraminal narrowing and degenerative changes in the cervical spine. In February 2003, however, the orthopedic specialist noted an improvement in plaintiff's pain and did not recommend further action at that time. Following that visit, plaintiff did not see another physician or physical therapist at least until his deposition in November 2003. He continued to take pain medication and use a neck brace if the pain was bothering him a great deal.

Plaintiff lives with his wife and their three grandchildren. Plaintiff alleges that his injuries have interfered with his ability to engage in recreational activities, such as golf and bicycling, that he previously enjoyed. He also alleges that he cannot perform household maintenance jobs that he used to do. Further, plaintiff alleges that he is no longer able to play with his grandchildren and attend their school functions to the extent that he was able to before the accident.

Plaintiff brought a negligence action against defendant for noneconomic damages under the no-fault insurance act, MCL 500.3101 *et seq.* Defendant moved for summary disposition. For purposes of her motion, defendant conceded that plaintiff had sustained an objectively manifested impairment of an important body function and argued the motion on the ground that plaintiff's injuries did not affect his general ability to lead his normal life. The trial court agreed and granted defendant's motion.

Plaintiff argues that the trial court erred in ruling that he did not meet the no-fault threshold because his impairment did not affect his ability to lead his 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." *Moore v Cregeur*, 266 Mich App 515, 517; 702 NW2d 648 (2005). In evaluating a motion for summary disposition under MCR 2.116(C)(10), a court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Maiden v Roswood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Under the no-fault act, a plaintiff can recover noneconomic damages arising from a motor vehicle accident only if he has "suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). Plaintiff claims he has suffered a serious impairment of body function, which is defined as "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 plaintiff has suffered a serious impairment of body function is a question of law to be decided by the court, unless there is a factual dispute concerning the nature and extent of the person's injuries that is material to determining whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a)(i), (ii).

In *Kreiner v Fischer*, 471 Mich 109, 131; 683 NW2d 611 (2004), our Supreme Court explained that a plaintiff must demonstrate that his injury has altered the “course or trajectory” of his life to meet the serious impairment threshold. A negative effect on a particular aspect of a person’s life is insufficient if the plaintiff is, for the most part, able to live his normal life. *Id.* at 130-131. In evaluating a plaintiff’s claim, the court should identify “how his life has been affected, by how much, and for how long.” *Id.* at 131. Doing so requires the court to “engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Id.* at 132-133.

Kreiner set forth a list of objective factors relevant to whether the plaintiff’s “general ability” to lead his normal life has been affected: “(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.” *Id.* at 133. The list is not exhaustive, and no single factor is meant to be dispositive. *Id.* Rather, a court must consider the “totality of the circumstances” to determine whether the impairment affects the plaintiff’s general ability to lead his normal life. *Id.* at 134. When a residual impairment is at issue, self-imposed restrictions based solely on pain, as opposed to physician-imposed restrictions, are insufficient to establish this point. *Id.* at 133 n 17.

Applying *Kreiner*, we conclude that plaintiff has failed to show that his injuries or residual impairments have affected his general ability to lead his normal life. Plaintiff asserts that he is no longer able to golf, play basketball, or engage in household tasks such as mowing the lawn and other “handyman” functions. His testimony, however, indicates that he limited these activities based on pain, rather than at the direction of a physician or other health care professional. For example, plaintiff stated that he tried to play golf once after the accident, but he found it too difficult and has not attempted it again. Similarly, he stopped playing basketball because he took the net down. Also, although he rides a stationary bike indoors, he no longer rides outdoors because when he attempted to do so the summer after the accident, he had difficulty steering. However, he was not instructed by a physician to refrain from these recreational activities. Therefore, these constitute self-imposed restrictions based on pain that are insufficient to establish a residual impairment. *Id.*

Aside from his reduced participation in recreational activities, the most significant change in plaintiff’s life after the accident is that he is limited in performing certain household chores. While this limitation was noted in his medical records, it is not itself sufficient to demonstrate a general inability to lead his normal life. Plaintiff is still able to perform some tasks around the house, such as cooking and helping with gardening. Even if he is no longer able to engage in “handyman tasks” such as shoveling and raking, this effect on a particular aspect of his life is insufficient to establish a change in his general ability to lead his normal life.

Overall, the course of plaintiff’s life has not been changed by the accident. Plaintiff continues to attend his grandchildren’s school functions, to cook, and to drive, albeit less frequently than he did before the accident. He is able to exercise, including walking and riding a stationary bicycle. His medical records indicate that his neck pain has improved, and he is no longer undergoing physical therapy or medical treatment other than pain medication. Therefore, we conclude that plaintiff’s impairment has not affected his general ability to lead his normal life, and the trial court did not err granting defendant’s motion for summary disposition.

Affirmed.

/s/ Patrick M. Meter
/s/ Jane E. Markey

I concur in result only.

/s/ Joel P. Hoekstra