

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS D. JONES,

Plaintiff-Appellant,

v

KATHLEEN P. OLSON and TODD R. OLSON,

Defendants-Appellees.

UNPUBLISHED

September 21, 2006

No. 268929

Wexford Circuit Court

LC No. 05-018785-NI

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), and implicitly denying his countermotion for partial summary disposition. The trial court determined as a matter of law that plaintiff had not suffered a serious impairment of body function. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We reverse and remand for proceedings consistent with this opinion.

Plaintiff suffered multiple injuries in an automobile accident on August 1, 2003. The most significant injury was an unusual but likely stable fracture of the spine at C-7. Plaintiff was initially treated with a cervical collar and medication. As of November 17, 2003, plaintiff had persistent pain in his neck with radiation of numbness into his shoulders and arms. On January 9, 2004, plaintiff reported continued discomfort in his neck and decreased rotation, but denied persistent radiation, numbness, or weakness. He underwent physical therapy with good results. The February 12, 2004, progress report indicates that he could return to heavy construction work, pouring foundation walls, for three hours per day or two days per week, increasing to full-time over the next two to four weeks. Plaintiff waited until March 2004 to return to work, and then returned full-time without restrictions. Plaintiff stated in his deposition on October 10, 2005 that he had not needed to take any time off since March 2004, that he was not on any medication and, that although his neck sometimes hurt, it did not prevent him from doing anything.

However, more relevant to the claim at hand, plaintiff also testified that during the approximate six months that he was off work, he was not able to hunt, snowmobile, play softball, do yard work, or walk with his girlfriend, which he had typically done four or five evenings each week. Further, he did not drive for three months, did not have intimate relations with his

girlfriend for two months, and had difficulty dressing and feeding himself for two months. Plaintiff has custody of his eleven-year-old son, and during the months after the accident, plaintiff needed help from his mother, grandmother, and girlfriend to get his son to school in the morning.

To prevail on his claim, plaintiff must establish a serious impairment of bodily function, which is an objectively manifested impairment of an important body function that affects the person's general ability to lead his normal life. MCL 500.3135(7); *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Plaintiff does not take issue with the trial court's determination that this case presents a question of law, since there is no material factual dispute concerning the nature and extent of his injuries. See MCL 500.3135(2)(a); *Kreiner, supra* at 120; *Moore v Cregeur*, 266 Mich App 515, 518; 702 NW2d 648 (2005). Plaintiff agrees with the trial court's determination that the impairment was objectively manifested. Plaintiff challenges only the trial court's determination that the impairment did not affect his general ability to lead his normal life, asserting that it did, albeit for a short duration. Our review is de novo. *Kreiner, supra* at 129.

In determining whether a plaintiff's "general ability" to conduct the course of his normal life has been affected, a court should consider the totality of the circumstances, including but not limited to, the nature and extent of the injury, the type and length of treatment required, the duration of the disability, the extent of residual impairment and the prognosis for eventual recovery. *Id.* at 133-134. In assessing the extent of the injury, a court should compare the plaintiff's lifestyle before and after the injury. *Id.* at 132. An injury need not be permanent to be an impairment of an important body function, *id.* at 135, but if the person's general ability to lead his normal life has not been affected, he has not suffered a serious impairment. *Id.* at 130. The *Kreiner* Court noted that "to 'lead' one's normal life contemplates more than a minor interruption in life," and that "the effect of the impairment on the course of a plaintiff's entire normal life must be considered." *Id.* at 131.

We find that the facts of this case present more than a "minor interruption" in plaintiff's life. Plaintiff's general ability to lead his normal life was put entirely on hold for the first two months after the accident, and returned only gradually over the following four months. Plaintiff's lifestyle before the injury was dramatically different from his lifestyle for the six months after the accident. Following the *Kreiner* Court's dictate that an injury need not be permanent to constitute a serious impairment, we hold that where, as here, an injury entirely disrupts a person's ability to lead his normal life, the fact that the person eventually recovers does not preclude recovery for that injury. To hold otherwise would disregard the Court's direction to consider such factors as the duration of the disability, comparative lifestyle before and after the injury, length of treatment, and other factors that suggest permanence is not dispositive. The totality of the circumstances of this case support plaintiff's contention that he should recover damages for the time period when his ability to lead his normal life was entirely disrupted.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper