

STATE OF MICHIGAN  
COURT OF APPEALS

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RAY UTLEY, JR.,

Plaintiff-Appellant,

v

RONALD LLOYD BROWN,

Defendant-Appellee,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant.

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UNPUBLISHED

October 24, 2006

No. 270133

Oakland Circuit Court

LC No. 2004-061023-NI

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

In this third-party action to recover noneconomic damages under the no-fault act, plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant under MCR 2.116(C)(10). Plaintiff challenges the trial court's determination as a matter of law that he did not suffer a serious impairment of body function. MCL 500.3135(1). We affirm. This case is being decided without oral argument under MCR 7.214(E).

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 120. In evaluating a motion for summary disposition under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Maiden, supra* at 120. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

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). "[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). 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. The court may consider factors such as the nature and extent of the 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.

The pertinent impairment involved plaintiff's neck and back. The nature and length of treatment included physical therapy for approximately two months and surgery on plaintiff's cervical spine. The impairment kept plaintiff from performing household chores for approximately two months and required him to miss work from March to May, and September to early December 2004. Plaintiff's work duties changed from operating a standing press to a sitting one, but he was still employed full time by the same employer. Plaintiff indicated that he no longer engaged in certain recreational activities and the frequency of his sexual intimacy had decreased, but he did not show that he was restricted from these activities by a physician. "Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point [residual impairment]." *Id.* at 133 n 17; *McDaniels v Hemker*, 268 Mich App 269, 283; 707 NW2d 211 (2005). A self-imposed restriction may be considered where it is not based on pain but rather because the plaintiff is physically incapable of performing the activity. *Id.*; see also *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005) (a court may consider changes in activities that are consistent with a physician's observation of limited movement). Here, however, plaintiff did not offer evidence linking his decision not to engage in the activities to a physician's observation of limited movement or a physical incapability of performing some motion. In the absence of physician-imposed restrictions or restrictions that are attributable to physical incapacity, the change in activities do not establish residual impairment.

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." *Id.* at 508. Plaintiff testified about his need for his girlfriend's assistance with household chores from March to May 2004, and with putting a shirt over his head for six to eight months after the accident. He did not testify about the period in which he recuperated from his surgery. His testimony did not show an impairment of a short duration that had an extensive effect on his life.

The trial court correctly concluded that the evidence was inadequate to establish a serious impairment of an important body function because the accident did not affect the course or trajectory of plaintiff's entire normal life.

We affirm.

/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens