

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN HILL,

Plaintiff-Appellant,

v

MARSHALL KELLER and RUTH KELLER,

Defendants-Appellees.

UNPUBLISHED

January 23, 2007

No. 269084

Oakland Circuit Court

LC No. 2005-066232-NI

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Plaintiff appeals the circuit court's order that granted defendants' motion for summary disposition under MCR 2.116(C)(10). Plaintiff sued to recover noneconomic damages for injuries he sustained as a pedestrian involved in a motor vehicle accident. Plaintiff attempted to stop traffic to direct a cement truck down a driveway when he was struck by a vehicle driven by defendant Marshall Keller. Defendants moved for summary disposition on the grounds that plaintiff's injuries did not meet the serious impairment of body function threshold required by MCL 500.3135(7). The trial court agreed and granted defendants' motion. We affirm.¹

"A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). A serious impairment of body function is "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). An objectively manifested injury is one that is "capable of objective verification by

¹ This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), a court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. MCR 2.116(G)(5); *Maiden, supra* at 120. If the evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden, supra* at 120.

a qualified medical person either because the injury is visually apparent or because it is capable of detection through the use of medical testing.” *Netter v Bowman*, 272 Mich App 289, 305; ___ NW2d ___ (2006). Whether a person has suffered a serious impairment of a 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 whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a).

If a court finds that an important body function has been impaired and that the impairment is objectively manifested, it must determine if the impairment affects the plaintiff’s general ability to lead his or her normal life. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). “In determining whether the course of the plaintiff’s normal life has been affected, a court should 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 133. “Although some aspects of a plaintiff’s entire normal life may be interrupted by the 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.” *Id.* at 131.

Here, plaintiff’s injuries resulting from the accident included a concussion, lacerations, a broken right fibula, a broken left pinky finger, and deep vein thrombosis. Plaintiff’s treatment for his injuries lasted approximately three months,² at which time he was authorized to return to work for a concrete company without restrictions. The medical evidence establishes that plaintiff’s injuries constitute an impairment of an important body function that was objectively manifested. Accordingly, we must decide whether the impairments affect his general ability to lead his normal life.

Looking at plaintiff’s life both before and after the accident, and the nature and extent of his injuries, we conclude that plaintiff’s injuries did not affect his general ability to lead his normal life. Plaintiff’s treatment was not significant or long-term. *Kreiner, supra* at 133. Although plaintiff complains of residual pain and numbness in his right leg that has been verified by an electromyography examination (EMG),³ he continues to work full time and testified that he works through the pain without taking medication and has never turned down work as a result of his injuries. Plaintiff argues that, over time, the pain he experiences will become more significant in his line of work. However, there is nothing in the medical record to substantiate that plaintiff’s injuries will become more severe over time. See *Netter, supra*.

² After the three months, plaintiff returned to his doctor twice with complaints of continuing pain in his right leg.

³ Plaintiff had an EMG on June 7, 2005 because he complained of lower extremity pain and numbness. The EMG indicated a mild abnormality of the right saphenous sensory nerve due to injury. A saphenous nerve is a “sensory nerve distributed to the skin on the inner side of the leg and foot.” *5 Attorneys’ Dictionary of Medicine and Word Finder* (2000).

Plaintiff also argues that his impairment has affected his general ability to lead his normal life because it has affected his ability to water-ski and play pool. See *Williams v Medukas*, 266 Mich App 505; 702 NW2d 667 (2005). We conclude that plaintiff's restriction on water-skiing is self-imposed. *Kreiner, supra* at 133 n 17. In addition, though we recognize that "specific activities should be examined with an understanding that not all activities have the same significance in a person's overall life," *id.* at 131, we conclude that the difficulty plaintiff experiences while playing pool does not constitute an impairment that affects his general ability to lead his normal life, see *Williams, supra* at 508-509 (noting that the plaintiff's permanent loss of range of motion in his wrist and shoulder precluded him from pursuing his love of golf, which he previously played 2-3 times per week, and prevented him from demonstrating how to shoot a basketball in his position as a basketball coach).

Moreover, we conclude that the inconvenience caused by plaintiff's pain does not rise to the level required to find that an individual's general ability to lead his or her normal life has been affected. Compare *Kreiner, supra* at 124, 137 (concluding that the statutory threshold was not met because the plaintiff, who experienced back, hip, and leg pain evidenced by an EMG finding of mild nerve irritation, was able to perform all the work he did as a self-employed construction worker and carpenter prior to the accident and was generally able to conduct the course of his normal life) with *McDaniell v Hemker*, 268 Mich App 269; 707 NW2d 211 (2005) (concluding that the statutory threshold was met because the plaintiff's injuries, including permanent and progressive head, neck, and back pain, required years of treatment and significantly affected her work life, home responsibilities, recreational activities, and sleep habits).

Affirmed.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Bill Schuette