

STATE OF MICHIGAN
COURT OF APPEALS

HERBERT JERNUKIAN, JR.,

Plaintiff-Appellant,

v

JULIE HOEGMAN,

Defendant-Appellee.

UNPUBLISHED

May 24, 2007

No. 274415

Macomb Circuit Court

LC No. 2006-000731-NO

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendant on plaintiff's claim alleging serious impairment of an important body function arising from an automobile accident. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when defendant drove her car into an intersection against the red light and struck the car driven by plaintiff. Plaintiff initially complained of pain in his neck, both knees, left arm and shoulder, and right hand. Following treatment by an orthopedist and physical therapy, plaintiff's knees and neck improved, and plaintiff also indicated that he did not have any problems with his right hand that were related to the accident. However, plaintiff suffered a torn rotator cuff in his left shoulder. Plaintiff received physical therapy and treated with a pain specialist. A surgical repair was medically recommended, but plaintiff is not a good surgical candidate because of preexisting pulmonary disease.¹

Plaintiff sued defendant, alleging a serious impairment of body function. Defendant moved for summary disposition, claiming that plaintiff had not established a genuine issue of

¹ We note that plaintiff, who was 69 years old at the time of the accident, has a significant pre-accident medical history consisting of chronic obstructive pulmonary disorder, emphysema, atherosclerotic vascular disease, an aneurysm of the thoracic and abdominal aorta with an enlarged heart, hypothyroidism, osteoarthritis, hypertension, hyperlipidemia, moderate-to-severe multi-level degenerative disk disease, and an enlarged prostate.

material fact that he is not generally able to lead the course of his normal life. The circuit court granted summary disposition in favor of defendant, simply ruling that plaintiff's "general ability to lead his normal life has not been affected by this accident based upon all of the documents that have been provided."

This court reviews de novo the grant or a denial of a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Under the no fault act, MCL 500.3101 *et seq.*, a person is subject to tort liability for noneconomic loss caused by his 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(7); *Kreiner v Fischer*, 471 Mich 109, 121; 683 NW2d 611 (2004). 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). To be generally able to lead a normal life, a person must be able to lead that life for the "most part." A court should consider (1) the nature and extent of the injury, (2) the type and length of treatment required, (3) the duration of the impairment, (4) the extent of any residual impairment, and (5) the prognosis for eventual recovery. *Kreiner, supra* at 133-134. In determining whether a plaintiff is able to lead his or her normal life, the court compares the plaintiff's life before and after the injury as well as the significance of any affected aspect of the plaintiff's life. Whether a plaintiff is generally able to lead his or her normal life requires considering whether the plaintiff is, "for the most part" able to lead his or her normal life. *Kreiner, supra* at 130. Further, generally subjective complaints of pain do not constitute an objectively manifested condition and cannot establish the existence of a serious impairment of a body function. *Garris v Vanderlaan*, 146 Mich App 619, 622; 381 NW2d 412 (1985). Also, self-imposed limitations are typically not sufficient to create a serious impairment of a body function. *Kreiner, supra* at 133, n17.

In this case, plaintiff suffered several injuries to his knees, hands, left shoulder, and neck. Plaintiff essentially testified that after physical therapy, draining of fluid, and some pain medication, the injuries to his knees, hands, and neck did not affect his ability to lead his normal life. Plaintiff complained however, that the injury to his left shoulder prevented him from doing "quite a few things" and "[j]ust about anything that took any strength," such as picking up things, yard work, shooting pool, and sometimes dressing himself and taking a shower. While presenting some inconvenience for plaintiff, none of these limitations affected his general ability to lead his normal life. Moreover, in the absence of a physician's written restriction, all these limitations appear to be self-imposed because of plaintiff's experience of pain. Therefore, we conclude that plaintiff has not met the serious impairment of body function threshold, and the circuit court did not err in granting summary disposition to defendant.

Affirmed.

/s/ Henry William Saad
/s/ Christopher M. Murray