

STATE OF MICHIGAN
COURT OF APPEALS

BRANDON LEE TAPLEY,

Plaintiff-Appellant,

v

NICHOLAS ANDREW YOUNG,

Defendant-Appellee.

UNPUBLISHED

July 14, 2005

No. 261313

Lake Circuit Court

LC No. 03-6206-NI

Before: Murphy, P.J. and Sawyer and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. Because plaintiff's injuries and alleged impairments do not constitute a serious impairment of body function, we affirm.

Plaintiff is a twenty-year-old cancer survivor who was involved in a motor vehicle accident with defendant on January 26, 2003. Immediately following the accident, plaintiff complained of numbness and immobility of his arm and leg that lasted approximately twenty-four hours. At that point he was diagnosed with a contusion of the spinal cord. Plaintiff treated with aggressive physical therapy, wore a neck brace for a period of time, and received intra-laminar epidural injections, as well as prescribed oral pain medications. Medical records indicate that his pain improved with treatment. However, plaintiff continued to complain of cervical spine pain, back spasms, headaches, and changes in vision in his left eye. The medical records provided to the court indicate that despite his complaints, plaintiff discontinued medical treatment in April 2004.¹

A review of plaintiff's medical history post-accident revealed that musculoskeletal exams showed a well-developed, well-nourished young male in no apparent distress. X-ray studies, CT studies, MRI studies, EMG studies, and nerve condition studies performed after the accident were essentially normal. Some electrodiagnostic evidence suggested possible radiculopathy at

¹ Plaintiff's testimony dated July 23, 2004 confirms that he was no longer receiving any medical treatment for his injuries at the time of the deposition and had not yet begun treating with a new physician after a move to Kentucky.

the C5 and C7 level. However, plaintiff provided no evidence that the possible radiculopathy is either related to the accident or is a serious impairment of body function. Medical records also illustrate that plaintiff complained of a visual disturbance in his left eye after the accident. Again, plaintiff provided no evidence that his visual disturbance is either related to the accident or is a serious impairment of body function. Medical records show that doctors examined plaintiff's eyes on February 13, 2003, and the physical examination was unremarkable. Plaintiff provided no other medical records substantiating his claim.

Plaintiff filed suit alleging that the injuries he sustained in the accident constituted a serious impairment of body function in December 2003. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff's injuries did not meet the threshold definition of a serious impairment of body function. The trial court granted the motion. 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. *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. In evaluating a motion for summary disposition brought under this subsection, 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. "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.* at 120.

"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). Whether a person has suffered a serious impairment of 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).

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course of the person's life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. *Id.* at 131. "Specific activities should be examined with an understanding that not all activities have the same significance in a person's overall life." *Id.* The court must examine the plaintiff's life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff's life. In order to determine whether the plaintiff's general ability to lead his or her normal life has been affected by the objective impairment, 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 132-134.

Here, neither plaintiff's injuries nor his alleged impairments were objectively manifested via any of the diagnostic test results. Although plaintiff was unable to move his arm and leg after the accident it continued for only twenty-four hours. Plaintiff has provided no objective

medical evidence that the complaints he continued to have following treatment were either caused by or related in any way to injuries he suffered in the automobile accident. Further, while plaintiff argues that he is a “frail” victim because he received life-saving treatment for non-hodgkins lymphoma prior to the accident, plaintiff has provided no medical evidence at all demonstrating that this condition played any role whatsoever in his accident recovery or post-accident activities of daily life.

Although there was some evidence in the record that plaintiff did some seasonal labor, there was nothing indicating that he was gainfully employed either prior to the accident or post-accident. There was no other evidence in the record indicating that plaintiff was no longer able to engage in activities that he enjoyed prior to the accident. No evidence showed that plaintiff’s physician restricted him from engaging in any activities whether work-oriented or recreational. See *Kreiner, supra* at 133 n 17.

Given the fact that plaintiff has provided no objectively verifiable medical evidence that any injuries he suffered during the automobile accident affect his general ability to lead his normal life, we must conclude, as a matter of law, that plaintiff’s injuries do not constitute a serious impairment of body function. Consequently, we also conclude that the trial court properly granted summary disposition to defendant. MCL 500.3135(2)(a).

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Pat M. Donofrio