

STATE OF MICHIGAN
COURT OF APPEALS

FREDERICK F. BELT, II,

Plaintiff-Appellant,

v

STEVEN G. MACZYNSKI and LOUISE HELEN
MACZYNSKI,

Defendants-Appellees.

UNPUBLISHED

October 2, 2008

No. 281733

Mecosta Circuit Court

LC No. 06-017385-NI

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

In this no-fault insurance action arising from an automobile accident, plaintiff appeals by leave granted an order of the circuit court granting defendants’ motion for summary disposition under MCR 2.116(C)(10). Because we conclude that there were no errors warranting relief, we affirm. This case is being decided without oral argument under MCR 7.214(E).

On appeal, plaintiff alleges that the trial court erred in granting defendant’s motion for summary disposition because there was ample evidence supporting a finding that he had satisfied the serious impairment of body function threshold. We review a motion for summary disposition de novo, testing the factual sufficiency of the complaint and considering the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817(1999).

Under the no-fault insurance act, MCL 500.3101 *et seq.*, a plaintiff may recover for non-economic damages if he “has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). A serious impairment of a 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 500.5135(7). A court may determine whether an individual has a serious impairment as a question of law if there is no factual dispute concerning the nature and extent of the person’s injuries. MCL 500.3135(2)(a); *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). Here, defendants concede that plaintiff has sustained an injury that affects a major life activity. Therefore, it was appropriate for the trial court to determine as a matter of law whether the injury constitutes a serious impairment that affects plaintiff’s general ability to lead a normal life.

The Court in *Kreiner* observed that, when determining whether a plaintiff's injury affects his or her general ability to lead a normal life, the totality of the circumstances should be considered. *Kreiner, supra* at 134. The Court cited the following nonexhaustive list of variables that might help in making this determination: "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Id.* at 133.

Plaintiff's employment situation has not changed; he was disabled from work before the accident and continues to be disabled. Likewise, he continues to enjoy limited recreational activities. The Michigan Supreme Court has noted that minor lifestyle changes necessary to accommodate an injury, although frustrating, do not rise to the level of a threshold injury. See *Behnke v Auto Owners Ins Co*, 474 Mich 1004, 1005; 708 NW2d 102 (2006). Even considering the evidence in the light most favorable to plaintiff, when the reasoning of *Behnke and Kreiner* are applied, plaintiff's life before and after the accident is not much different with the exception that he is somewhat limited in his social, housework, and lawn care activities. The plaintiff is able to do some housework and lawn care, although he may not be able to do so all the time and it may be somewhat more difficult to do so. Further, he is able to enjoy social activities for a time, but may need to lie down after a while because of pain.

While plaintiff is inconvenienced by his pain and must change his lifestyle somewhat to accommodate the injury, "[s]elf-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish" the extent of residual impairment. *Kreiner, supra* at 133 n 17. Plaintiff testified at his second deposition that, while he had been restricted for a couple of months by his doctor from lifting more than two pounds with his right arm, he was not then on any medical restrictions related to his right shoulder. Moreover, plaintiff has been dealing with pain since 1996, and there is no indication that his accident-related pain has significantly altered the pre-accident trajectory of his life. His habit of taking four Vicodin pills daily to lessen his pain has been ongoing since 1996. In sum, although plaintiff does experience some limitations as a result of his injury, he is still able to generally lead his normal life.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher