

STATE OF MICHIGAN
COURT OF APPEALS

JESSIE LOUIS GUEVARA,

Plaintiff-Appellant,

v

ERIC ANDREW MARTINEZ, FILIBITO
GARCIA, and AMBER LEE SAMPLE,

Defendants-Appellees.

UNPUBLISHED

May 24, 2005

No. 260387

Muskegon Circuit Court

LC No. 04-042937-NO

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting the motion for summary disposition filed by defendant Amber Lee Sample and concurred in by defendants Eric Andrew Martinez and Filibito Garcia, and dismissing the case. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff occupied a vehicle with defendants, and suffered a dislocated right shoulder and a torn anterior rotator cuff when the vehicle struck a tree. An orthopedic surgeon placed plaintiff in a shoulder immobilizer and, six weeks following the accident, performed surgery to repair the rotator cuff tear and remove a bone fragment. Plaintiff's last visit with the surgeon occurred four months following the accident, and he was discharged from physical therapy five months following the accident.

Plaintiff filed suit, alleging that the injuries he sustained in the accident constituted a serious impairment of body function. Sample 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 because they did not affect his general ability to lead his normal life. The trial court granted the motion, finding that while plaintiff suffered objectively manifested injuries, the injuries did not affect his general ability to lead his normal life.

We review de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

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). For an impairment to be objectively manifested, there must be a medically

identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 653; 654 NW2d 604 (2002). 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. The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. 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. *Kreiner v Fischer*, 471 Mich 109, 131-134; 683 NW2d 611 (2004).

Plaintiff's shoulder injuries were objectively manifested via x-rays and an MRI examination. *Jackson, supra*. He was unable to use his dominant right arm or perform various activities related to his personal care for two months following the accident, but was released from physical therapy without restrictions five months following the accident. Plaintiff acknowledged that he was seeking employment in his usual occupation as a cook,¹ and stated that while he still had pain in his shoulder, he could play basketball, exercise, do yard work, and play with his children. Plaintiff did not lift weights as he did prior to the accident, and was unable to throw a ball well following the accident. However, no physician placed any restrictions on his activities, and no evidence showed that the range of motion in his shoulder would be limited on a permanent basis. Pain, in and of itself, is not an objectively manifested condition and cannot be relied upon to establish the existence of a serious impairment of body function. *Kreiner, supra* at 133 n 17. No evidence presented in opposition to the motion for summary disposition created an issue of fact as to whether plaintiff's injuries affected his general ability to lead his normal life. Absent such evidence, plaintiff was unable to make out a prima facie case that he suffered a serious impairment of body function. The trial court did not err in determining that the issue of whether plaintiff suffered a serious impairment of body function was a question of law under the circumstances, MCL 500.3135(2)(a), and correctly granted summary disposition in favor of defendants.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

¹ In his deposition plaintiff indicated that he had performed construction work on a part-time basis for only two months prior to the accident.