

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL WIEDYK,

Plaintiff-Appellant,

v

JOHN PAUL POISSON and TRAVERSE CITY
LEASING, d/b/a HERTZ,

Defendants-Appellees.

UNPUBLISHED

January 6, 2009

No. 280214

Midland Circuit Court

LC No. 06-009751-NI

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this action for noneconomic damages under the no-fault act. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court determined that, given the evidence of plaintiff's substantial pre-existing injuries from numerous other accidents, plaintiff failed to establish that the injuries he received in his latest July 26, 2005, accident affected his general ability to lead his normal life, as is necessary for recovery pursuant to MCL 500.5135(1) and *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004).

This Court reviews de novo the trial court's order granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."

A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). "[S]erious impairment of body function" means "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). In determining whether an impairment has affected the course of a plaintiff's normal life, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Kreiner, supra*, pp 132-133. The court must analyze

whether any difference has actually affected the plaintiff's general ability to conduct the course of his or her life. *Id.*, p 133.

Activity sheets that plaintiff completed in April 2005 for his Social Security disability claim identified his activities as watching TV, showering, listening to the radio, napping, eating, going to bed, and a 15-minute period in which he "walked around and sat down outside." On May 25, 2005, plaintiff's doctor reported that plaintiff "can only stand and walk for short distances before his legs get numb, picky, and feels [sic] weak. . . . He is not able to work or do daily activities." A July 18, 2005, decision of an administrative law judge on plaintiff's claim for Social Security benefits discusses plaintiff's limitations and activities as follows:

Testimony regarding daily activities reveals that he has no household chores. His hobbies include watching television and listening to the radio. He is able to shower and dress himself without difficulty. He does not take care of pets or take out the trash or yard and garden work. He is involved in no organizations or clubs and visits only occasionally with friends and relatives. He does no shopping. He is able to drive an automobile and drives to the doctor and chiropractor. He sees the doctor for treatment of depression because he cannot seem to concentrate.

At a hearing on defendants' motion for summary disposition, the court gave plaintiff an opportunity to supplement the record to provide evidence showing "how the course and trajectory of his life, given what it was immediately prior to this accident, how it has been affected." Plaintiff thereafter submitted an affidavit from Dr. Awerbuch. The affidavit lists a host of injuries arising from the accident, lists activities that were limited, and opined that "the quality of [plaintiff's] life has been negatively affected." However, the affidavit does not indicate what limitations were new, and Dr. Awerbuch's conclusion that the quality of plaintiff's life "has been negatively affected" does not substitute for providing facts from which a court may compare plaintiff's life before and after the accident. In light of plaintiff's failure to present evidence indicating that the course of his life had changed, the trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Kurtis T. Wilder