

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE KEY,

Plaintiff-Appellant,

v

TYSON LEE HERRICK and EDNA LOUISE
HERRICK,

Defendants-Appellees,

and

JAMES ROUSCH,

Defendant.

UNPUBLISHED
February 14, 2006

No. 264265
Allegan Circuit Court
LC No. 03-034681-NI

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's grant of defendant's motion for summary disposition, based on its finding that plaintiff had not suffered a serious impairment of body function under MCL 500.3135. We affirm.

This case arises from an automobile accident wherein defendant Tyson Herrick ran a stop sign and collided with the car in which plaintiff was riding. At the time, plaintiff worked stocking and delivering parts for Lentz, a job that required a lot of lifting, bending, and driving. Two weeks after the accident, plaintiff first complained of low back pain to his osteopath, who diagnosed lumbosacral strain, administered manipulative therapy and prescribed Vicodin and anti-inflammatories. Six weeks later plaintiff returned after he had slipped at work while carrying a box of soap and "threw his back out." He was again diagnosed with lumbosacral strain, treated with manipulative therapy, electrical stimulation and was prescribed more Vicodin as well as Naprosyn. Over the next four years, plaintiff intermittently returned to the osteopath for treatment, receiving manipulative therapy, cortisone and colchicine injections, electrical stimulation, and drug therapy. He was also referred to a specialist who diagnosed a herniated disc that later resolved itself. An independent medical evaluation in April, 2005 diagnosed

plaintiff with chronic back pain and spinal stenosis¹ with probable radiculopathy². That evaluation also found that although plaintiff was not able to be involved with any type of employment requiring bending, twisting, or lifting, he was able to perform his activities of daily living.

On appeal, plaintiff challenges only the circuit court's determination that plaintiff had not suffered a serious impairment of body function because he had not demonstrated an effect on his general ability to lead his normal life. Whether a plaintiff has established a serious impairment under MCL 500.3135 is a question of law to be decided by the court, unless there is a factual dispute concerning the nature and extent of the person's injuries or there is a factual dispute, but that dispute is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a)(i), (ii). Here there is no dispute as to plaintiff's injuries, so it is a question of law. Questions of law are reviewed de novo. *Bennett v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

The no-fault insurance act provides, "a person remains subject to tort liability for noneconomic loss . . . 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 defined as "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). Here, the parties do not dispute that plaintiff's injuries are objectively manifested and are of an important body function. The sole dispute is whether plaintiff's impairment has affected his general ability to lead his or her normal life.

In determining whether there has been an effect on a person's general ability to lead his normal life, the court should compare the plaintiff's life before and after the accident, and determine the significance of any affected aspects on the course of the plaintiff's overall life. *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004). "Specific activities should be examined with an understanding that not all activities have the same significance in a person's overall life." *Id.*, 131. Then, the court must determine "whether any difference between the plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's 'general ability' to conduct the course of his life," using an objective analysis. *Id.*, 133. A nonexhaustive list of objective factors to be used to make this determination include, "(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.* With regard to residual impairments, "Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point." *Id.*, 133, n 17.

Plaintiff contends his life has been dramatically changed since the accident, constituting an effect on his general ability to lead his normal life. He argues that he is no longer able to

¹ A narrowing of the spinal canal that can be caused by aging, heredity, or changes in blood flow to the spine.

² Nerve irritation caused by damage to the discs between the vertebrae.

work at his job and had to quit. Further, he claims he can no longer do other things he did before the accident including, hunting, fishing, swimming, bowling, go-karting, household chores like laundry and vacuuming, and regular maintenance around the house. We disagree. Although plaintiff is now unable to hold a job requiring bending, twisting, or lifting, he did continue in his job for four years after the accident and his medical records reflect that he continued to do heavy lifting. Further, the rest of the residual impairments claimed by plaintiff are not physician-imposed restrictions, but are self-imposed restrictions based on plaintiff's subjective belief that he is unable to do them. Such self-imposed restrictions are not sufficient under the objective standards required by *Kreiner, supra*, 471 Mich 133, n 17. Therefore, plaintiff has merely demonstrated that one aspect of his life is changed due to his impairment. His treatments were not aggressive and he does not require any assistive devices. He has also gone up to a year without seeking any medical assistance for the impairment. As noted by our Supreme Court in *Kreiner*, "the totality of the circumstances must be considered, and the ultimate question that must be answered is whether the impairment 'affects the person's general ability to conduct the course of his or her normal life.'" *Id.*, 134. Considering the totality of the circumstances here, only one aspect of plaintiff's life has been affected, and not his general ability to conduct the course of his normal life.

Affirmed.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Karen M. Fort Hood