S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

JOHN S. RIDEOUT,

Plaintiff-Appellant,

and

CAROL COLEMAN,

Plaintiff,[1]

v

MARTIN L. SELVIDGE,

Defendant-Appellee.

UNPUBLISHED
August 1, 2006

No. 259937
Monroe Circuit Court
LC No. 03-017199-NI

Before: Fitzgerald, P.J., and Saad and Cooper, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that granted summary disposition to defendant. We affirm.

This action arises out of injuries plaintiff sustained in two automobile accidents. Defendant was involved in the second accident and plaintiff argues that there is an issue of fact regarding whether, in the second accident, plaintiff sustained a serious impairment of an important body function that affected his general ability to lead a normal life. We disagree.

We review de novo an appeal from an order granting summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank,* 468 Mich 557, 561; 664 NW2d 151 (2003).[2]

[1] A stipulation and order was entered dismissing Coleman's claim with prejudice on November 24, 2004.

[2] A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when the moving party is entitled to judgment as a matter of law because there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A genuine issue
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Pursuant to Michigan's no-fault insurance act, an individual is liable for noneconomic damages caused by the use of his motor vehicle "only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement." MCL 500.3135(1). A "serious impairment of a 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, plaintiff has not suffered a serious impairment of a body function that satisfies the statutory threshold.

There is no factual dispute concerning plaintiff's injuries. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). Dr. Michael Baghdoian stated that the second accident aggravated plaintiff's right knee problems from the first accident. Also, Dr. Baghdoian seemed to indicate that while he originally thought after the first accident that the right knee would recover through physical therapy, he later believed surgery was necessary at some point after the second accident. Dr. Baghdoian also stated that it appeared that the second accident caused plaintiff's left knee injury. Further, after the second accident, plaintiff was diagnosed with an "acute cervical, thoracic, lumbar strain." This evidence establishes that the second accident caused injuries to plaintiff's knees and back.

Further, plaintiff arguably suffered an impairment to an important body function. Dr. Bradford Barker's medical examination after the second accident indicated that plaintiff was "unable to walk on his right toes or his right heel." Before the second accident, Barker reported that plaintiff was able to walk on his toes and heels, albeit with difficulty. *Random House Webster's College Dictionary* (1997) defines "impaired" as "weakened, diminished or damaged," and it appears that plaintiff's ability to walk was diminished after the second accident because he was unable to walk heel to toe as he could prior to the second accident. Therefore, because walking is an important body function, plaintiff's ability to walk was arguably impaired after the second accident. See *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000) (walking is an important body function).

Importantly, however, notwithstanding that plaintiff suffered an impairment to an important body function, the impairment did not affect plaintiff's general ability to lead his normal life. In fact, a review of the record indicates that plaintiff suffered similar problems both before and after the second accident. Though plaintiff was unable to walk on his right heel and toe immediately after the second accident, plaintiff could only walk on his heel and toes with difficulty and severe pain before the second accident. Further, though plaintiff complained of knee popping sensations after the second accident, he admitted that his right knee would "pop out" frequently before the second accident. Moreover, while plaintiff claimed that he could walk

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of material fact exists when reasonable minds could differ after drawing reasonable inferences from the record. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing this issue, we must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If the nonmoving party would bear the burden of proof at trial, that party must show there is a genuine issue of material fact by setting forth documentary evidence. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001).

one to two miles per day about two to three times per week before the second accident, he reported that, on a good day, he can walk one to two miles per day after the second accident.

Plaintiff testified that there are "tremendous" things that he cannot do around his home since the second accident. However, in many respects, it appears plaintiff is not worse off after the second accident. For example, though plaintiff required 20 hours of assistance per week to do his yard work before the second accident, he was able to occasionally mow his lawn with a push mower after the second accident. In addition, while plaintiff claimed that his favorite hobby before both accidents was attending auto shows, he admitted that, since both accidents, he has attended them on rare occasions.

Further, while plaintiff has been unemployed since the second accident, plaintiff admitted that he had not worked for over a year prior to the second accident. And, though plaintiff claimed that his inability to work has changed his life from spending 12 to 14 hours per day working to just watching television, plaintiff was actually restricted from working as a race car mechanic *before* the second accident because he could not lift more than 125 pounds.

Dr. Baghdoian also stated that the second accident did not significantly aggravate plaintiff's right knee because any right knee condition was merely a reflection of the original injury from the first accident and that it was the right knee injury that was disabling. In fact, by November 29, 2001, Dr. Baghdoian had concluded that any results of the second accident were "pretty much resolved." Moreover, Dr. Baghdoian believed that plaintiff's tracking surgery following the second accident was a consequence of the first accident.

In sum, our review of the record reveals that plaintiff experienced many of the same difficulties both before and after the second accident. We also note that all of the similarities in plaintiff's pre- and post-accident lifestyle exist even though plaintiff also injured his left knee and back in the second accident. Clearly, though he sustained additional injuries in the second accident, there is little significant change, if any, in plaintiff's pre- and post-accident lifestyle. Therefore, the second accident has not affected plaintiff's "general ability to conduct the course of his life." *Kreiner, supra* at 133-134.[3]

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[3] Plaintiff argues that his life has changed since the second accident because he cannot play with his dogs as he would like and had to have the transmission in his truck changed from manual to automatic. Regarding plaintiff's dogs, plaintiff has not specified in what ways he cannot play with them. Given that "self-imposed restrictions" do not qualify as a residual impairment, plaintiff has not shown how this has affected the "course or trajectory" of his entire normal life before the second accident. *Id*. at 131. With regard to his truck, though self-imposed restrictions based on inability may change a plaintiff's ability to lead a normal life, *McDanield v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005), there is no indication that plaintiff cannot drive the truck since he had the transmission changed. Thus, the transmission would only be a minor change in how plaintiff performs the specific activity of driving and does not constitute a threshold injury. *Kreiner, supra* at 131. Moreover, plaintiff admitted that he does not drive the truck often anyway because it is his "winter truck" and he further admitted that he did not drive the truck during the winter before the second accident. Thus, plaintiff has failed to show how he

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Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad

I concur in result only.

/s/ Jessica R. Cooper

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no longer has the general ability to lead a normal life. *Id*.