

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER RAKCZYNSKI,

Plaintiff-Appellant,

v

TERRENCE WAYNE KURIGER,

Defendant-Appellee.

UNPUBLISHED

January 13, 1998

No. 194410

Manistee Circuit Court

LC No. 95-007760-NI

Before: White, P. J., and Cavanagh and Reilly, JJ

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court found as a matter of law that plaintiff's injuries did not amount to "serious impairment of body function," the threshold necessary for the recovery of noneconomic damages under the no-fault insurance act, MCL 500.3135; MSA 24.13135, subsequently amended by 1995 PA 222. We affirm.

On appeal, plaintiff argues that the trial court erred when it concluded that reasonable persons could not differ on the question whether plaintiff's injury constituted a serious impairment of body function. We disagree. This Court reviews the grant or denial of a motion for summary disposition de novo. *McGuirk Sand & Gravel, Inc v Meridian Mutual Ins Co*, 220 Mich App 347, 352; 559 NW2d 93 (1996). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. Summary disposition is permitted when, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. When reviewing such a motion, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to it in a light most favorable to the nonmoving party. *Id.* If there is no material factual dispute regarding the nature and extent of the plaintiff's injuries, but reasonable minds could differ on the question of whether the plaintiff suffered a serious impairment of body function, summary disposition should not be granted. *DiFranco v Pickard*, 427 Mich 32, 58; 398 NW2d 896 (1986).

The Michigan Supreme Court, in *DiFranco, supra* at 39, explained that former § 3135(1)¹ was intended to bar recovery of noneconomic damages to those persons who suffered minor injuries or injuries which did not seriously impair the ability of the body, in whole or in part, to function. The determination of whether an injury constituted a “serious impairment of body function” involves inquiry into (1) which body function, if any, was impaired, and (2) whether the impairment was serious. *Id.* Several factors should be considered to determine whether an injury was serious, including the extent of the impairment, the particular body function impaired, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors. *Id.* at 39-40. An impairment need not be permanent to be serious. *Id.* at 40. The paramount consideration is the effect of the injury on the plaintiff’s body functions rather than the effect of the injury on the plaintiff’s life. *Id.* at 68-69.

Plaintiff was injured in an automobile accident caused by defendant’s negligence. Immediately following the collision, plaintiff was examined in a hospital where he complained of pain to his shoulder, back and neck. After some x-rays were taken, plaintiff was instructed to take aspirin and rest at home. One week after the accident, plaintiff was examined by his family physician who prescribed pain killers and muscle relaxants and instructed plaintiff to limit his activities. Plaintiff experienced persistent pain despite the prescribed medications. During the next fifteen months, plaintiff visited his family physician nine times, was examined by a neurosurgeon, and underwent one month of physical therapy. Eventually, plaintiff’s family physician ceased treating plaintiff because the treatment had been ineffective. Plaintiff was instructed to return if his condition worsened.

The neurosurgeon who examined plaintiff concluded in a letter to plaintiff’s family physician that the results of a complete neurological exam were normal and that plaintiff did not have symptoms of radiculopathy or myelopathy. He also found that plaintiff’s x-rays and an MRI test were normal. Although plaintiff’s CT scan showed a bulging disc, the neurosurgeon opined that the bulge was “artifactual.”² The neurosurgeon also explained that a musculoskeletal exam showed minimal limitation of extension of plaintiff’s neck. Noting that plaintiff had experienced persistent pain which had “gradually subsided,” but continued to be present “to a mild degree,” the neurosurgeon diagnosed plaintiff as having a chronic myofascial strain of the cervical region which he believed would persist in its “mild form” for “quite some time.” The neurosurgeon did not think there was any evidence of a herniated disc or neurologic injury and explained that he could not be of any assistance to plaintiff’s problem.

Plaintiff testified in his deposition that, after the accident, he felt pain on a regular basis. However, he acknowledged that his condition had improved “approximately 50%” during the fifteen months in which he sought treatment from his family physician. In any event, plaintiff explained that, after the accident, he was unable to participate in certain recreational activities, such as swimming or volleyball, because these activities caused his pain to increase. While plaintiff still enjoyed riding his snowmobile, he was more cautious in doing so because he would “feel it” afterwards. Four months after the accident, plaintiff returned to his seasonal employment on a loading dock where he was required to lift objects weighing between five and eight pounds. After being laid off from the loading

dock at the end of the season, plaintiff took a manufacturing job for three months. Finally, plaintiff took a different manufacturing job for which he passed a physical examination.

Viewed in a light most favorable to plaintiff, the evidence showed that, after the accident, plaintiff felt some pain in his neck, back, and shoulders. This pain apparently was the result of a chronic muscle strain. While the degree of pain gradually diminished from the time of the accident, it remained great enough to limit plaintiff's ability to engage in certain recreational activities, but did not inhibit his employment as a laborer. Notably, plaintiff has offered no evidence of any limitation in his range of movement, and the x-rays and MRI test performed on his neck were "normal." We hold that, on this record, reasonable minds could not find that plaintiff suffered a "serious impairment of body function." See *Kallio v Fisher*, 180 Mich App 516, 518-519; 448 NW2d 46 (1989) (holding that reasonable minds could not find a serious impairment of body function where the plaintiff's whiplash injury initially limited the plaintiff's range of motion by twenty-five percent and resulted in a period of chronic neck pain); *Johnston v Thornsby*, 163 Mich App 161, 163; 413 NW2d 696 (1987) (holding that reasonable minds could not find a serious impairment of body function where the plaintiff suffered lower back pain which was treated with Tylenol and a torn rotator cuff which healed without treatment). Accordingly, the trial court properly granted summary disposition. *DiFranco, supra* at 58.

Affirmed.

/s/ Helene N. White

/s/ Mark J. Cavanagh

/s/ Maureen Pulte Reilly

¹ Prior to its amendment, which became effective on March 28, 1996, MCL 500.3135(1); MSA 24.13135(1) provided that:

A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement.

² The Attorneys' Dictionary of Medicine defined "artifactual" as meaning, "Of the nature of an artifact (which see); created accidentally; erroneous." 1 Schmidt, Attorneys' Dictionary of Medicine (Cumulative Supplement, Feb, 1997), p 155. "Artifact" was defined as follows: "1. Same as *artefact*, i.e., something produced artificially and unintentionally in a tissue, cell, etc., by the method used to preserve it or to prepare it for examination. 2. Any object or structure made by man." 1 Schmidt, Attorneys' Dictionary of Medicine (Feb, 1997), p A-395.