

STATE OF MICHIGAN
COURT OF APPEALS

MARVIN LINDSEY,

Plaintiff-Appellant,

v

JULIA GRINAGE and LAUREN GRINAGE,

Defendants-Appellees.

UNPUBLISHED

October 28, 2004

No. 248579

Jackson Circuit Court

LC No. 02-002402-NI

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's vehicle collided with defendants' vehicle in July 2001. X-rays revealed that plaintiff suffered a depressed lateral tibial plateau fracture of his right knee. Approximately four months after the accident, plaintiff's physician found the fracture to be fully healed, and advised plaintiff that he could put full weight on his leg and engage in activities as tolerated.¹ Plaintiff filed suit alleging that the injuries he suffered in the accident resulted in a serious impairment of body function. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), concluding that no evidence showed that plaintiff suffered an injury that affected his general ability to lead his normal life.

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

¹ In 1989, plaintiff was involved in a dirt bike accident in which he broke his right femur between the knee and the hip. In 1995, plaintiff was involved in an accident in which he suffered a closed head injury and broke his left knee and wrist as well as his right ankle, femur, hip, and shoulder. He underwent multiple surgeries after this accident, and stabilizing hardware was placed in his left leg. Plaintiff was judged to be completely disabled, and began receiving Social Security disability benefits.

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, 652-653; 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). Otherwise, the determination whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury.

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. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). The court must examine how, to what extent, and for how long the plaintiff’s life has been affected by the impairment. *Id.* at 131. And, 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. *Id.* at 132-133. 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. *Id.* at 133-134.

Plaintiff exhibited an objectively manifested impairment of his knee as a result of the accident. *Jackson, supra*. The ability to walk is an important body function. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). Nevertheless, no evidence created a question of fact as to whether plaintiff’s injury affected his general ability to lead his normal life. Plaintiff was able to resume placing full weight on his leg approximately four months after the accident. He stated that after the accident he was required to take more frequent rest breaks during activities and to adjust the manner in which he performed certain activities, but acknowledged that he was able to engage in the activities in which he participated prior to the accident. No physician restricted plaintiff from engaging in recreational activities. Self-imposed restrictions do not establish that an injury has affected a person’s ability to lead his normal life. *Kreiner, supra*, at 134 n 17. No evidence showed that plaintiff’s general ability to lead his normal life was adversely affected by any injury caused by the accident. 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 defendants’ motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra