

STATE OF MICHIGAN
COURT OF APPEALS

RODNEY MCCORMICK,

Plaintiff-Appellant,

v

LARRY CARRIER,

Defendant,

and

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED

March 25, 2008

No. 275888

Genesee Circuit Court

LC No. 06-083549-NI

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

The grant or denial of a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo to ascertain whether the movant is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We review the record in a light most favorable to the nonmoving party to determine whether the evidence established the existence of a genuine issue of material fact for trial. *Id.* at 120.

A person remains liable in tort for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person suffered death, serious impairment of body function or permanent serious disfigurement. MCL 500.3135(1). In *Kreiner v Fisher*, 471 Mich 109, 131-133; 683 NW2d 611 (2004), our Supreme Court set forth the standards for assessing whether a plaintiff has sustained a serious impairment of body function, which is a threshold question for the trial court when there are no material questions about the nature or extent of the plaintiff's injuries. To meet the statutory threshold, a plaintiff must show an "objectively manifested impairment" that affects his or her "general ability to lead his or her normal life." MCL 500.3135(7). The overall course of the plaintiff's entire normal life before and after the injury must be compared. *Kreiner, supra* at 130-131. A plaintiff cannot establish

serious impairment of a body function on the basis of self-imposed limitations “based on real or perceived pain.” *Id.* 133 n 17; *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005). “If, despite [a plaintiff’s impairments], the course or trajectory of the plaintiff’s normal life has not been affected, then the plaintiff’s ‘general ability’ to lead his normal life has not been affected and he does not meet the ‘serious impairment of body function’ threshold.” *Kreiner, supra* at 131.

In this case, the evidence showed that plaintiff was injured in January 2005 while working at defendant’s plant in Flint. A co-worker backed a truck over plaintiff’s left ankle. As the trial court found, the broken left ankle was a serious injury that impacted an important body function—namely, the ability to stand and walk. That plaintiff underwent two surgeries clearly indicates that the injury was objectively manifested. But plaintiff’s treating doctor returned him to work in January 2006 without restrictions. Plaintiff continued to fish and golf, much as he had prior to being injured. He drove his truck and cared for himself without any help. Plaintiff has continued to work at his same rate of pay, albeit at another duty. He did not seek further medical treatment after his doctor sent him back to work. At his deposition, plaintiff admitted that, except for some ankle pain, his life is relatively normal.

We acknowledge that plaintiff’s injury was serious enough to require two operations and that plaintiff continues to suffer from some degree of ankle pain. We also acknowledge that painful injuries, such as that sustained by plaintiff in the present case, do not generally disappear over time or necessarily improve with age. However, even viewing the facts in a light most favorable to plaintiff, we simply must conclude that plaintiff’s injury did not affect his ability to lead his normal life. MCR 500.3135(7); *Kreiner, supra* at 131.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen