

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ERIK W. LUNDQUIST,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellant,

and

RANDY JOSEPH KING,

Defendant.

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UNPUBLISHED

May 20, 2008

No. 277917

Alpena Circuit Court

LC No. 06-000928-NI

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Defendant, State Farm Mutual Automobile Insurance Company (“defendant”), appeals by leave granted the trial court’s denial of its motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On April 21, 2003, plaintiff was injured in a motor vehicle accident in which he was a restrained passenger. Plaintiff was transported to the hospital where he received stitches for an eight-inch laceration on his forehead, underwent some tests, and was released. When plaintiff returned to the hospital to have the stitches removed, he complained of continuing stiffness. Additional tests revealed a transverse fracture at C-7; plaintiff was referred to a neurologist. The neurologist ordered plaintiff to wear a hard cervical collar for approximately six weeks. After the collar was removed, plaintiff’s neurologist recommended physical therapy, and plaintiff attended four of the six scheduled appointments.

Thereafter, plaintiff relocated to South Carolina, where he received no further treatment for an extended period. In November 2005, plaintiff complained of pain in his neck and back on a visit to his family physician in South Carolina. Plaintiff was diagnosed with a thoracic strain. Plaintiff’s physician recommended a one-month course of physical therapy, but plaintiff delayed receiving that treatment for several months. When plaintiff did complete the recommended therapy, he had good results.

At the time of the accident, plaintiff was employed as a waiter at a restaurant in Alpena. Pursuant to doctor's orders, he remained off work for a period of two and one-half months. Plaintiff is currently employed as the manager of a seafood restaurant in South Carolina. His duties include administrative responsibilities, as well as more labor-intensive tasks, such as lifting 50-pound buckets of seafood. Plaintiff is able to do his job, but has missed some work because of therapy appointments, and he reports that he sometimes experiences pain that interferes with his ability to do his job.

Plaintiff also reports that the pain he experiences interferes with his sleep. He takes prescription sleep medication approximately once a week. In addition, plaintiff has discontinued certain recreational activities such as water-skiing and riding on wave runners. He discontinued these activities upon his doctor's oral recommendations, but never received written instructions to do so.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), which the trial court denied, finding that a material question of fact existed regarding whether plaintiff's general ability to lead his normal life had been affected by the impairment.

Defendant argues that plaintiff failed to satisfy the serious impairment threshold, and that it was entitled to summary disposition. We agree. We review a trial court's decision on a motion for summary disposition de novo. *Associated Builders & Contractors v Wilbur*, 472 Mich 117, 123; 693 NW2d 374 (2005).

A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff "has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). "[S]erious impairment of body function' means 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).

To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person's entire normal life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). In determining whether the course of a person's normal life has been affected, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Id.* at 132-133. The court may consider the following factors: "(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.* at 133 (footnote omitted). Residual impairment is not established by self-imposed restrictions based on real or perceived pain, as opposed to physician-imposed restrictions. *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005).<sup>1</sup>

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<sup>1</sup> A self-imposed restriction may be considered if it is not based on pain, but rather is in place because the plaintiff is physically incapable of performing the activity. *McDaniel v Hemker*, 268 Mich App 269, 282-283; 707 NW2d 211 (2005); see also *Williams v Medukas*, 266 Mich (continued...)

We are persuaded that plaintiff has failed to satisfy the serious impairment threshold. Plaintiff's doctor-imposed work restrictions consisted of a single two and one-half month period shortly after the accident. There have been no other written doctor-imposed restrictions relating to work or to recreational activities. Despite plaintiff's complaints about pain, occasional missed work, and trouble sleeping, he has maintained his employment as manager of a restaurant. In addition, plaintiff has gone extended periods with no treatment, has delayed receiving recommended treatment, or has failed to complete treatment programs.

When viewed as a whole, it appears that plaintiff has been able to lead his normal life for the most part. His field of employment remains the same, and, in fact, he has advanced in the field from waiter to manager. While he avoids some recreational activities that he once enjoyed, this has not been at the written recommendation of any doctor. His reported trouble sleeping does not appear to have affected his job performance. In short, the impairment complained of does not appear to have had a significant effect on the overall trajectory of plaintiff's life.

Reversed.

/s/ Kirsten Frank Kelly  
/s/ Donald S. Owens  
/s/ Bill Schuette

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(...continued)

App 505, 509; 702 NW2d 667 (2005). No evidence showed that plaintiff's self-imposed restrictions were based on anything other than pain.