

STATE OF MICHIGAN
COURT OF APPEALS

GUNNARD W. KYLLONEN

Plaintiff-Appellant,

v

WILLIAM A. LUEPNITZ,

Defendant-Appellee.

UNPUBLISHED

October 6, 2009

No. 288659

Mackinac Circuit Court

LC No. 08-006481-NO

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant and dismissing his claim for noneconomic damages under the no-fault act, MCL 500.3101 *et seq.* We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On May 4, 2007, plaintiff and his wife were driving northbound on M-123 in a Dodge pickup truck pulling a 27-foot travel trailer. Defendant was also in a pickup truck driving northbound on M-123. Defendant was ahead of plaintiff, and going slower than plaintiff. As plaintiff pulled alongside defendant to pass him, defendant attempted to make a left turn onto a cross street and struck plaintiff's truck, causing it to go off the road and roll three times.

Plaintiff and his wife were treated at and released that same day from Mackinac Straits Hospital. Plaintiff later followed up with an orthopedic surgeon concerning his left shoulder at which time it was discovered that plaintiff had a grade V shoulder separation. The doctor performed surgery in late May to place a screw in that shoulder. The screw also had to be surgically removed in August.

Plaintiff was retired from full-time work at the time of the accident, but his injuries caused him to miss four to five weeks of his part-time job as a courtesy driver for a car dealership. Plaintiff worked once a week at his part-time job for eight hours and would shuttle customers as well as pick-up and deliver packages for the dealership. On most days that he worked, plaintiff would also sweep the floor. After the accident, plaintiff experienced soreness and light pain when lifting heavy packages, sweeping, doing some yard work, and swinging golf clubs. He therefore reduced his golf schedule in 2007 due to the injury. He described the pain as brief, dull, and short.

A trial court's ruling to grant or deny summary disposition is reviewed de novo. *McDaniel v Hemker*, 268 Mich App 269, 272; 707 NW2d 211 (2005). Questions of statutory interpretation are also reviewed de novo. *Id.*

Michigan's no-fault act provides that a person injured in a motor vehicle accident is entitled to certain economic compensation from his own insurance company regardless of fault. *Kreiner v Fischer*, 471 Mich 109, 114; 683 NW2d 611 (2004). "In exchange for the payment of these no-fault economic loss benefits from one's own insurance company, the Legislature limited an injured person's ability to sue a negligent operator or owner of a motor vehicle for bodily injuries." *Id.* at 115. An owner or operator of a motor vehicle may be liable for noneconomic damages "only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). As defined in the statute, "'serious 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).

When determining whether a plaintiff has a serious impairment of a body function, the effect of the impairment on the course of a plaintiff's entire normal life must be considered. Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite those impingements, 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 the present case, there is no dispute that plaintiff has an objectively manifested impairment or that the ability to use one's shoulder and move one's arm is an important body function. The issue is whether this impairment affects plaintiff's general ability to lead his normal life. MCL 500.3135(7). Plaintiff testified at his deposition that following the accident he did not work at the car dealership for four to five months, and he golfed less than normal in 2007. He also testified that once back at work he could feel soreness and light pain when he would lift heavy packages or sweep the floor. Plaintiff felt pain when golfing and during some yard work as well. Plaintiff described the pain as brief, dull, and short.

Under our Supreme Court's definition of a serious impairment as defined in *Kreiner, supra*, we are bound by that legal precedent to concur with the findings of the trial court that plaintiff's impairment does not rise to the level of serious impairment of body function. While some aspects of plaintiff's entire normal life are impinged upon by the effects of his impairment, the course or trajectory of his normal life has not been affected. Therefore, because we are bound by the precedent in *Kreiner, supra* at 131, we must conclude that plaintiff's injury does not meet the "serious impairment of body function" threshold.

Determining whether a plaintiff has suffered permanent serious disfigurement depends on the physical characteristics of the disfigurement rather than on its effect on the plaintiff's ability to lead a normal life. *Kosack v Moore*, 144 Mich App 485, 491; 375 NW2d 742 (1985). Determining the seriousness of scarring is a matter of common knowledge and experience that is

left to the trial bench or jury if it reaches that point. *Nelson v Myers*, 146 Mich App 444 n 2 446; 381 NW2d 401 (1986).

The only evidence presented to support plaintiff's claim of permanent serious disfigurement was some photographs of his left shoulder. The pictures show a bump between the neck and left shoulder and, if examined closely, show a slight discoloration of skin where the surgical scar appears to be. However, plaintiff cites no authority in the record to any evidence suggesting that the scarring has had a detrimental emotional or any other effect on plaintiff.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello