

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN E. YURSCO,

Plaintiff-Appellant,

v

JUSTIN D. SWANSON, GILBERT ARIZOLA,
GAIL B. LANCOP, and PROGRESSIVE
MICHIGAN INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED

March 9, 2010

No. 289227

Saginaw Circuit Court

LC No. 08-000355-NI

Before: SERVITTO, P.J., and BANDSTRA and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's opinion and order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) with respect to plaintiff's 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).

We review a trial court's grant or denial of summary disposition *de novo*. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). A motion under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Tevis v Amex Assurance Co*, 283 Mich App 76, 80; 770 NW2d 16 (2009). Summary disposition may be granted under this subrule if the evidence submitted by the parties fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 424-425; 751 NW2d 8 (2008).

Under MCL 500.3135(1), a person remains subject to tort liability for noneconomic losses arising from the use of a motor vehicle "only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." In this case, plaintiff argues that the trial court erred in determining that he could not establish a serious impairment of body function, which is defined as "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).

The trial court found that plaintiff suffered an injury to his left shoulder in an August 1, 2007, motor vehicle accident, that the use of the shoulder is an important body function, and that the injury was objectively manifested, but determined that there was no genuine issue of material

fact that the injury did not affect plaintiff's "general ability" to lead his normal life. After reviewing the submitted evidence,¹ we conclude that the trial court's decision is correct.

Our Supreme Court's decision in *Kreiner*, 471 Mich at 131-134, establishes the framework for analyzing whether an injury affects a person's general ability to lead his or her normal life. Because we are bound by case law established by our Supreme Court, *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009), we decline plaintiff's request to revisit the decision in *Kreiner*.

Under *Kreiner*, the determination whether an injury affects a person's general ability to lead his or her normal life must be made on a case-by-case basis. *Id.* at 134 n 19. The starting point in analyzing whether an impairment affects a person's general ability to lead his or her normal life is to identify how the person's life has been affected, by how much, and for how long. *Id.* at 131. "Specific activities should be examined with an understanding that not all activities have the same significance in a person's overall life." *Id.* at 131. A de minimus effect is insufficient because, objectively viewed, it would not affect the person's "general ability" to lead his or her normal life. *Id.* at 133. "While an injury need not be permanent, it must be of sufficient duration to affect the course of a plaintiff's life." *Id.* at 135.

Here, the evidence established that on August 1, 2007, plaintiff sustained a fracture that affected the movement and strength of his left shoulder. In his deposition, plaintiff stated that he needed some assistance with household chores for four or five days after the accident. He received physical therapy to improve the strength and motion of the shoulder and was allowed to return to work, without restrictions, on October 10, 2007. He was self-discharged from physical therapy on November 14, 2007. Plaintiff stated that he still does not have full strength in his left arm, and is unable to lift his arm straight over his head, but those limitations did not affect his ability to do his job as a fork truck driver, perform household chores, or engage in recreational activities.

Plaintiff's reliance on *Moore v Cregeur*, 266 Mich App 515, 520; 702 NW2d 648 (2005), and *Williams v Medukas*, 266 Mich App 505, 508-509; 702 NW2d 667 (2005), is misplaced because those cases are factually distinguishable. Unlike the plaintiff in *Moore*, who suffered a vision loss that affected every aspect of her life, plaintiff here was quickly able to resume his normal activities. Similarly, the plaintiff in *Williams* sustained more serious injuries that affected the use of both of his arms, which impaired his ability to perform his job as a basketball coach and prevented him from participating in certain recreational activities. Here, plaintiff was allowed to return to work without restrictions approximately nine weeks after the accident, and his injury did not affect his ability to engage in recreational activities. Although plaintiff testified in his deposition that he continues to have occasional pain in his shoulder, "[t]he focus . . . is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body." *Netter v Bowman*, 272 Mich App 289, 295; 725 NW2d 353 (2006).

¹ We have limited our review to the deposition excerpts and other documentary evidence that the parties submitted to the trial court. *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990).

The trial court did not err in finding that there was no genuine issue of material fact that plaintiff's shoulder injury did not affect plaintiff's general ability to lead his normal life and, therefore, plaintiff was unable to establish a serious impairment of body function to support recovery of noneconomic damages under MCL 500.3135.

We affirm. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood