

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT J. LINDEBLAD,

Plaintiff-Appellant,

v

KATHY JEAN GRASMAN and TERRANCE
KEITH PORTFLEET, d/b/a LIGHTNING
PROTECTION SERVICES, INC.,

Defendants-Appellees.

UNPUBLISHED
October 23, 2012

No. 306159
Alger Circuit Court
LC No. 2010-005076-NI

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants on the ground that plaintiff lacked a serious impairment of body function. We reverse and remand.

On July 10, 2009, plaintiff's vehicle was struck from the rear by a vehicle driven by defendant Grasman, causing plaintiff's vehicle to collide with a motorcycle. Plaintiff reported no injury at the scene of the accident, but later went to Munising Municipal Hospital to seek treatment for his neck and back. Plaintiff underwent 16 months of treatment before he was allowed to return to unrestricted work. During this time period, plaintiff saw numerous physicians and physical therapists, and received various explanations for his injuries. Both parties provided extensive medical documentation of plaintiff's treatment.

A number of physicians concluded that plaintiff had suffered no spinal fracture, dislocations, or neck damage from the car accident, and several of these physicians concluded that disc bulges in plaintiff's back were due to degenerative disc disease caused by aging. Conversely, a number of evaluations concluded that plaintiff suffered serious impairments as a result of the auto accident. A functional capacity evaluation performed on May 12, 2010, to determine plaintiff's ability to return to work indicated that plaintiff could lift at most 10 pounds continuously throughout the day, below the requirements for his former position as a kiln worker.

During deposition on April 29, 2011, plaintiff stated that he could no longer engage in activities such as jet skiing, snowshoeing, bicycling and playing basketball. Plaintiff stated that he still went hunting, but that he had difficulty walking and could not sit in a blind for long

periods. Plaintiff could no longer hunt bears because he could not walk with dogs as he had in the past.

The trial court granted defendants' motion for summary disposition, finding that plaintiff failed to present any evidence of an objectively manifested impairment or that his general ability to lead his normal life had been affected.

Plaintiff argues that the trial court erred by granting summary disposition in favor of defendants because a genuine issue of material fact existed as to whether he suffered an objectively manifested impairment of an important body function and whether his general ability to lead his normal life had been affected. We agree, reverse the trial court's decision, and remand for further proceedings.

We review a trial court's decision on a motion for summary disposition de novo. A motion under MCR 2.116(C)(10) is reviewed "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Marlow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

Three elements are required to show a serious impairment: 1) an objectively manifested impairment, 2) that affects a key bodily function, and 3) affects the person's general ability to lead his or her normal life. MCL 500.3135(7).

An objectively manifested impairment is defined as "an impairment that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function." *McCormick v Carrier*, 487 Mich 180, 196; 795 NW2d 517 (2010). MCL 500.3135(7) specifically omits the use of the word "injury"; as such, "the proper inquiry is as to whether the *impairment* is objectively manifested, not the *injury* or its symptoms." *Id.* at 197 (emphasis in original).

Medical documentation is not always required to establish an objectively manifested impairment. *Id.* at 198. The *McCormick* Court stated, "Thus, to the extent that *Kreiner* [*v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).] could be read to *always* require medical documentation, it goes beyond the legislative intent expressed in the plain statutory text and was wrongly decided." *Id.* (emphasis in original). Rather, "'the objectively manifested' requirement signifies that plaintiffs 'must introduce evidence establishing that there is a physical basis for their subjective complaints of pain and suffering and that a showing of impairment generally requires medical testimony.'" *Id.*, quoting *DiFranco v Pickard*, 427 Mich 32, 74; 398 NW2d 896 (1986).

A genuine issue of material fact existed as to whether plaintiff suffered an objectively manifested impairment. Several physicians treated plaintiff for 16 months after the accident. A number of these physicians concluded that plaintiff's spinal injuries resulted from the accident and not degenerative disc disease. A functional capacity evaluation revealed that plaintiff could lift only 10 pounds continuously throughout the course of the workday. Plaintiff was not allowed to return to unrestricted work until 16 months after the accident. Viewing this evidence in the light most favorable to plaintiff, a rational factfinder could find that plaintiff suffered an

objectively manifested impairment. The medical documentation demonstrates more than mere subjective allegations of pain by plaintiff.

Similarly, a genuine issue of material fact existed as to whether plaintiff's ability to lead his normal life was impaired. A plaintiff need not show that his ability to lead his normal life was destroyed, but merely affected. *McCormick*, 487 Mich at 202. In *McCormick*, the plaintiff's normal activities consisted of working 60 hours per week, fishing, and golfing. *Id.* at 218. The plaintiff was unable to return to work for 14 months, did not actually return for 19 months, and took almost a year to return to fishing regularly. *Id.* at 217-219. Eventually, the plaintiff returned to working and golfing. *Id.* at 187-188.

Here, plaintiff could not return to unrestricted work for 16 months. He had continuing difficulty with walking and bear hunting, and was unable to jet ski, snowshoe, bike, or play basketball. Based on this evidence, a rational factfinder could conclude that plaintiff's ability to lead his normal life was affected.

Genuine issues of material fact existed; thus, summary disposition was improper. We reverse the trial court's decision and remand for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Joel P. Hoekstra