

STATE OF MICHIGAN
COURT OF APPEALS

VICKI HERDUS,

Plaintiff,

and

VIRGIL KNOWLES,

Plaintiff-Appellant,

v

GARY LEE RAFFENSBERGER, II,

Defendant-Appellee.

UNPUBLISHED

November 17, 2000

No. 219378

Jackson Circuit Court

LC No. 98-087656-NI

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

In this action arising out of injuries suffered in an automobile accident, plaintiff Virgil Knowles¹ appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff was injured when a vehicle in which he was a backseat passenger collided with a vehicle driven by defendant. Plaintiff suffered some facial injuries, including a large hematoma around his left eye and swelling. Approximately five and one-half months after the accident, plaintiff still experienced facial swelling, a drooping left eyelid, and some difficulty in his vision. Plaintiff underwent surgery, which improved his condition. However, he was left with some paralysis above the left eye, the inability to raise his left eyebrow, and periodic headaches which he treats with Tylenol.

We review a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In considering a motion under MCR 2.116(C)(10),

¹ The claims of plaintiff Vicki Herdus were settled, and she is not a party to this appeal. The word "plaintiff" in the body of this opinion therefore refers only to plaintiff-appellant Virgil Knowles.

the court must consider the pleadings, affidavits, depositions, and other documentary evidence submitted by the parties in a light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Under MCL 500.3135(1); MSA 24.13135(1), an individual may be liable for noneconomic loss caused by his or her ownership or use of a motor vehicle only if the injured person suffered death, serious impairment of a body function, or permanent serious disfigurement. *May v Sommerfield*, 239 Mich App 197, 199-200; 607 NW2d 422 (1999). “This statutory threshold is designed to eliminate suits based on clearly minor injuries and those that do not seriously affect the ability of the body to function.” *Id.* at 200. Pursuant to MCL 500.3135(2); MSA 24.13135(2), the issue of whether an injured person has suffered a serious impairment of a body function or permanent serious disfigurement is a question of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement.

Here, the trial court found, as a matter of law, that plaintiff had not suffered a serious impairment of body function. For purposes of this statutory section, “‘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); MSA 24.13135(7). To determine whether an impairment of a body function is serious, a court should consider the following nonexclusive list of factors: the extent of the injury, the treatment required, the duration of the disability, and the extent of any residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). “[A]n injury need not be permanent to be serious.” *Kern, supra* at 341, quoting *Cassidy v McGovern*, 415 Mich 483, 505; 330 NW2d 22 (1982).

The parties agree that plaintiff’s impairment was objectively manifested, but defendant contends that the impairment does not involve an important body function. We disagree. Before his surgery, plaintiff’s reconstructive surgeon found that plaintiff had “severe edema of both eyes with resulting difficulty of vision. There is ptosis of the left side of the forehead due to loss of temporal nerve function.” Thus, there was medical evidence that at least five and one-half months after the accident, plaintiff still had problems with facial swelling, drooping of the eyelid, and obstructed vision. This evidence is sufficient to satisfy the requirement of an objectively manifested impairment of an important body function.

However, plaintiff failed to show that the impairment affected his general ability to lead his normal life. In his deposition, the eighty-four-year-old plaintiff stated that he had retired when he was sixty-two and had lived with his brother in Illinois for the past ten years. He drove

450 miles to Michigan, by himself, about seven times each year to see family. He continued this travel after the accident. He testified that he previously swam three days per week but had discontinued this activity because his eyes became bloodshot from swimming after the accident. Nonetheless, no doctor had told him that the bloodshot eyes were in any way connected to the accident. Although plaintiff had been prescribed medication for periodic headaches, he discontinued taking the medication after eight to fourteen days because it caused his mouth to be dry and made him dizzy. Plaintiff now took regular strength Tylenol for his headaches. Asked if the injury interfered with his normal daily activities, plaintiff testified, "It might just a little, but not much." Asked to clarify "just a little," plaintiff stated that he did not want to do the things he used to want to do, like getting up on the roof. However, plaintiff also agreed that he was able to take care of all of his personal needs, including driving his car.

There was no evidence regarding any restrictions to plaintiff's activities or abilities after the accident or before his surgery. The only testimony about plaintiff's life style changes referred to self-imposed restrictions on activities, such as discontinuing weekly swims or no longer wanting to work on the roof. Thus, while it was not disputed that plaintiff's impairment was objectively manifested and that the medical evidence showed that plaintiff had suffered at least a temporary impairment to an important body function, plaintiff presented no evidence that the impairment affected his general ability to lead his normal life. Therefore, the trial court did not err in granting summary disposition to defendant.

Affirmed.

/s/ Janet T. Neff

/s/ William B. Murphy

/s/ Richard Allen Griffin