

STATE OF MICHIGAN  
COURT OF APPEALS

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TIMOTHY T. WEBB,

Plaintiff-Appellant,

v

RYAN DOMINIQUE REECE and ALGER  
SNEED,

Defendants-Appellees.

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UNPUBLISHED

October 20, 2005

No. 262594

Oakland Circuit Court

LC No. 04-059593-NI

Before: Cavanagh, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants under MCR 2.116(C)(10). We affirm.

According to his complaint, plaintiff was involved in an automobile accident with defendant Ryan Dominique Reece in June of 2004.<sup>1</sup> On July 7, 2004, plaintiff commenced the present action, alleging that, as a result of the accident, he suffered injuries amounting to a serious impairment of body function. On March 4, 2005, defendants filed a motion for summary disposition under MCR 2.116(C)(10). In their motion, defendants argued that plaintiff failed to establish that the accident in question caused an injury that met the serious impairment of body function threshold set by MCL 500.5135. After two hearings on the motion, the trial court granted defendants' motion and signed an order to that effect on April 19, 2005.

Plaintiff first argues that the trial court improperly granted defendants' motion for summary disposition under MCR 2.116(C)(10). Specifically, plaintiff argues that had the trial court properly considered all of the evidence, it could not have concluded that summary disposition was appropriate. We disagree.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary

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<sup>1</sup> Plaintiff alleged that defendant Alger Sneed was liable as the owner of the vehicle driven by Reece. See MCL 257.401.

disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* Summary disposition is appropriate under MCR 2.116(C)(10) if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” When determining whether there is a genuine issue as to any material fact, the trial court must consider the evidence presented by the parties in the light most favorable to the party opposing the motion. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

A person is only subject to tort liability for noneconomic loss caused by his or her “use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). A serious impairment of body function is “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). Where there is no material question of fact regarding the nature and extent of the plaintiff’s injuries, whether plaintiff’s injuries constitute a serious impairment of body function is a matter of law. MCL 500.3135(2)(a); see also *Moore v Cregeur*, 266 Mich App 515, 517-518; 702 NW2d 648 (2005). Because there is no material question of fact regarding the nature and extent of plaintiff’s injuries, this Court may decide whether those injuries constitute a serious impairment of body function as a matter of law.

In the present case, diagnostic tests performed on plaintiff revealed several impairments to his back and neck. Based on these tests and his examination of plaintiff, plaintiff’s physician, Haranath Policherla, M.D., diagnosed plaintiff with cervical radiculopathy, bilateral carpal tunnel syndrome, decreased range of motion in his neck, bilateral C5-C6 radiculopathy, a bulging disc at L4-L5 and L5-S1, and balance problems. Because the injuries are medically identifiable, they are “objectively manifested” for purposes of MCL 500.3135(7). *Jackson v Nelson*, 252 Mich App 643, 652; 654 NW2d 604 (2002). However, defendants argue that these diagnostic tests do not provide medically verifiable evidence of injury, because the medical records from before the accident reveal that plaintiff had identical preexisting injuries. Defendant contends that plaintiff must demonstrate an objectively verifiable new injury or aggravation of an old injury. We disagree.

At his deposition, Policherla acknowledged that some of plaintiff’s impairments preexisted the accident,<sup>2</sup> but testified that the accident both aggravated the preexisting injuries and caused some new ones.<sup>3</sup> Policherla based his conclusions in part on the tests conducted. Whether this testimony is inconsistent with those tests or other evidence is a matter of credibility and, in considering a motion for summary disposition, we are not permitted to assess the credibility of a witness. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Instead, this Court must consider the evidence presented by the parties in the light most favorable

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<sup>2</sup> Policherla had been treating plaintiff since his involvement in an earlier automobile accident in 2002.

<sup>3</sup> A plaintiff with preexisting injuries may recover for serious impairments of body function caused by the aggravation of those preexisting injuries. *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000).

to the party opposing the motion. *Smith, supra* at 454-455. When considered in the light most favorable to plaintiff, Policherla's testimony is sufficient to establish the existence of an objectively manifested impairment.<sup>4</sup> Furthermore, injuries to the back constitute an impairment of an important body function. *Kreiner v Fischer*, 471 Mich 109, 136; 683 NW2d 611 (2004). Therefore, the only remaining question is whether those injuries affected plaintiff's general ability to lead his normal life. *Moore, supra* at 518.

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course of the person's life. *Kreiner*[, *supra* at 130-131.] The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. *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.* The court must examine the plaintiff's life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff's life. In order to determine whether the plaintiff's general ability to lead his or her normal life has been affected by the objective impairment, the court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Id.* at 132-134. [*Williams v Medukas*, 266 Mich App 505, 508; 702 NW2d 667 (2005).]

As a preliminary matter to considering whether plaintiff's impairments affected his general ability to lead his normal life, we note that it is undisputed that plaintiff suffered from physical and mental ailments that limited his lifestyle even before the accident currently at issue. It is also undisputed that plaintiff was involved in a automobile accident in 2002, after which plaintiff was diagnosed with many ailments similar to the ones he now has. Because we must compare plaintiff's life before the accident to his life after the accident and determine whether the course of his life was affected by the impairments occasioned by the accident, *Medukas, supra* at 508, we must differentiate those limitations imposed by his preexisting conditions from those allegedly arising from the accident at issue.

In his deposition, plaintiff testified that after the second accident he could no longer jog, could not socialize at the club he used to frequent, could not go to his sons' school to watch them play and practice football, could no longer hunt or fish and cannot engage in regular activities, like playing with his dog. Furthermore, plaintiff testified that Policherla told him not to drive, not to pick up anything heavy or perform chores. Plaintiff also testified that his sex-life has suffered and his wife has to help him dress and bathe. Finally, plaintiff stated that he

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<sup>4</sup> Likewise, Policherla's deposition testimony is sufficient to create a fact question as to whether the accident caused plaintiff's injuries or otherwise aggravated preexisting injuries. Hence, to the extent that defendants argued that plaintiff failed to present sufficient evidence that the accident caused plaintiff's injuries, we reject that argument.

experiences significant pain that interferes with his ability to sleep and prevents him from sitting in place for any length of time.

Although these changes will often be sufficient to establish that an impairment has affected a person's general ability to lead his or her normal life, under the present circumstances we do not believe plaintiff has successfully met the threshold requirements of MCL 500.3135(1). While plaintiff complains that, because of his injuries he cannot perform certain activities, he admits that he does in fact still participate in some of those activities. Plaintiff admitted that he continues to go to the club where he likes to socialize, albeit not as frequently as he would like, and continues to drive. In addition, plaintiff testified that he chooses not to engage in many activities as a result of pain, which makes him not want to be around others, and not because he is physically unable. For other changes, such as his inability to jog or do chores, there is evidence that similar limitations preexisted the second accident. Given the totality of these circumstances and the limited scope of plaintiff's lifestyle before the accident in question, we cannot conclude that the "course or trajectory" of plaintiff's normal life has been affected by the injuries allegedly sustained in the accident in question. *Kreiner, supra* at 131. Hence, plaintiff has not suffered injuries that constitute a serious impairment of body function as required by MCL 500.3135(1). Consequently, summary disposition for defendant was appropriately granted.

Plaintiff next contends that he was denied a fair and impartial summary disposition hearing because the trial court refused to grant an adjournment and was so angered that it was unable to be objective and fair. Plaintiff's argument is completely devoid of legal analysis or citation to authority, therefore, it was abandoned on appeal. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). Even if it were not abandoned, we would reject plaintiff's argument. The record does not reveal that the trial court's decision was motivated by anger. Indeed, the trial court did in fact adjourn the first summary disposition hearing in order to accommodate plaintiff's request to consider Policherla's deposition testimony. Therefore, there was no error.

Plaintiff further contends that the trial court was biased against him because of his poor speaking skills and lack of education. Again, plaintiff completely fails to identify the applicable law or engage in legal analysis. Instead, plaintiff merely quotes portions of the record and asserts that the cited instances prove the existence of bias. Because this issue was insufficiently briefed, it was abandoned on appeal. *Watson, supra* at 587.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Michael R. Smolenski  
/s/ Brian K. Zahra