

STATE OF MICHIGAN
COURT OF APPEALS

JUAN M. BALDERAS,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant/Counter Plaintiff-
Appellant,

and

MOHAMMED MACHI and SHAHEM KHAIRY
YAQOUB,

Defendants-Counter Defendants.

UNPUBLISHED

May 4, 2006

No. 264854

Ingham Circuit Court

LC No. 04-001204-NI

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In this action to recover noneconomic damages under the no-fault act,¹ defendant appeals by leave granted from the trial court's order denying its motion for summary disposition.² We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 1, 2002, Shahem Yaqoub was operating a vehicle owned by Mohammed Machi when Yaqoub struck plaintiff's vehicle from behind while it was stopped at a red light. Plaintiff alleged that he suffered severe and permanent injuries constituting a serious impairment of a major body function and that, because Yaqoub and Machi were uninsured, plaintiff was entitled to uninsured motorist benefits from his no-fault insurer, defendant State Farm.

¹ MCL 500.3101 *et seq.*

² Defendants/cross-defendants Shahem Khairy Yaqoub and Mohammed Machi are not parties to this appeal. Unless otherwise indicated, the term "defendant" as used herein refers solely to appellant State Farm.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). “When a motion under [MCR 2.116(C)(10)] is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial.” MCR 2.116(G)(4).

MCL 500.3135(1) provides that a person “remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or 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(7) defines “serious impairment of body function” as “an objectively manifested impairment of an important body function *that affects the person's general ability to lead his or her normal life*” (emphasis supplied).

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.]

We first note that plaintiff has failed to establish an objectively manifested impairment stemming from the January 2002 accident. Plaintiff did present evidence that he had a subluxed coccyx and that he had been diagnosed with coccydynia and spinal arthritis. However, he presented absolutely no evidence connecting these problems to any injury sustained in the automobile accident. The traffic crash report filed by the Lansing Police Department following the accident states that plaintiff suffered no injury. A physician whom plaintiff saw within weeks of the accident—apparently for reasons unrelated to the accident—told plaintiff that he needed counseling rather than chiropractic treatment, and plaintiff did not seek any further medical treatment until one year later. An “accident questionnaire” completed by plaintiff at his chiropractor's office on January 9, 2002, indicated that he did not sustain any loss of movement following the accident, and that he was not disabled or unable to perform any work or physical activities. Although the chiropractor's report lists several concerns, the report does not associate those concerns with the accident, and the chiropractor further stated that plaintiff suffered no disability and that no permanent impairment was anticipated from the accident. Notes taken by a physician one year after the accident indicated that plaintiff stated that he “does exercise, biking and weight lifting daily.” X-rays taken more than a year after the accident revealed only “mild degenerative changes” and a subluxed coccyx, the age of which injury was “radiographically indeterminate.” Furthermore, plaintiff was involved in several other automobile accidents before and after the subject accident, and he suffered an on-the-job accident in May 2002 in which he fell on his tailbone. Plaintiff presented no evidence supporting a finding that his tailbone and back problems were attributable to the January 2002 accident rather than to any of these other incidents.

Moreover, even assuming that plaintiff suffered an objectively manifested impairment of an important body function, he has failed to demonstrate that the impairment has affected his general ability to live his normal life. The only evidence submitted with respect to the duration

of the impairment and prognosis for recovery comes from plaintiff's chiropractor, who stated that no permanent impairment was anticipated from the accident. Plaintiff's testimony that he could no longer sit in one place without shifting positions, thus affecting his ability to ride his bike and to go to movies and on long trips, does not support a finding that the "trajectory" of his normal life has been affected. Indeed, he remains able to drive a delivery truck for nine hours per day, and he missed only one day of work. Moreover, each of these limitations has been self-imposed by plaintiff based on real or perceived pain, rather than imposed by a physician; thus, this evidence may not be used to establish the extent of plaintiff's residual impairment. *Kreiner, supra* at 134 n 17. In short, "considered against the backdrop of his preimpairment life," *Kreiner, supra* at 136, plaintiff's "postimpairment life is not so different that his 'general ability' to conduct the course of his normal life has been affected." *Id.*

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot