

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ZAK BAALBAKI,

Plaintiff-Appellant,

v

TIMOTHY ALLEN SEELOW,

Defendant-Appellee.

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UNPUBLISHED

February 5, 2008

No. 275629

Oakland Circuit Court

LC No. 05-069188-NI

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Plaintiff allegedly incurred serious injuries as a result of an automobile accident involving defendant. Plaintiff sued defendant for damages. However, the trial court granted defendant's motion for summary disposition, holding that plaintiff (1) failed to demonstrate that his back injury was related to the accident and (2) failed to show that any injuries he did incur affected his general ability to live his normal life.

As this Court explained in *O'Donnell v Garasic*, 259 Mich App 569, 572-573; 676 NW2d 213 (2003):

A trial court's grant or denial of summary disposition under MCR 2.116(C)(10) is reviewed de novo on appeal. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. Affidavits, pleadings, depositions, admissions, and documentary evidence are considered in reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), and the evidence is viewed in the light most favorable to the party opposing the motion. Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. [Internal citations and quotation marks omitted.]

Because death or permanent serious disfigurement are not at issue in this case, in order to maintain the instant lawsuit plaintiff had to demonstrate that he suffered a "serious impairment of body function" as a result of the accident. 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).

In *Kreiner v Fischer*, 471 Mich 109, 132-133; 683 NW2d 611 (2004), the Court stated:

In determining whether the course of the plaintiff’s normal life has been affected, a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life. Once this is identified, the court must engage in an objective analysis regarding whether any difference between the plaintiff’s pre- and post-accident lifestyle has actually affected the plaintiff’s “general ability” to conduct the course of his life. Merely “any effect” on the plaintiff’s life is insufficient because a de minimis effect would not, as objectively viewed, affect the plaintiff’s “general ability” to lead his life. [Emphasis in original.]

In our opinion, even assuming that plaintiff suffered a back injury because of the accident, he has not demonstrated that the injury affected his “general ability to lead his or her normal life.” MCL 500.3135(7). While there was evidence that plaintiff had to subcontract out some of his work at the granite fabricating and installing business that he owns, there was no evidence that he was unable to work at all, that he missed any work, or that his business failed because of the accident. Moreover, while plaintiff testified at his deposition that he could no longer dance, bowl, or play soccer, basketball, or volleyball, there was insufficient evidence that these activities made up a significant aspect of his pre-accident life. Additionally, while plaintiff testified that he cannot lift heavy laundry baskets or grocery bags, he admitted that he can lift lighter laundry baskets and lighter grocery bags. The report concerning plaintiff’s eventual need for surgery did not elaborate on how plaintiff’s life would be affected beyond stating that plaintiff was “partially disabled” and “capable of sedentary work only.”

Further, we find summary disposition was also appropriate in accordance with the trial court’s additional determination that plaintiff failed to present any medical substantiation linking his alleged injury to the automobile accident. While the issue of whether plaintiff suffered a serious impairment of body function that impacted his ability to lead a normal life was a threshold question that had to be addressed, MCL 500.3135(7), plaintiff was also required to demonstrate that the alleged injury was caused by the accident. Specifically, MCL 500.3135(1) provides:

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. [Emphasis added.]

It is inherent in any negligence claim that “a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000) (internal citation and footnote omitted).

Plaintiff failed to present evidence that he suffered a serious impairment of body function impacting his ability to lead his normal life. However, as recognized by the trial court, there is also an absence of any evidence linking or demonstrating that plaintiff's injuries were caused by the accident. Although the medical records contain numerous assertions of pain being experienced by plaintiff occurring after the accident, none of the cited physicians or medical care providers stated that plaintiff suffered any physical injury as a result of the accident.

Under the circumstances, the court properly granted defendant's motion for summary disposition.<sup>1</sup>

Affirmed.

/s/ Michael J. Talbot

/s/ Brian K. Zahra

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<sup>1</sup> Plaintiff implies that defendant did not properly raise an issue concerning plaintiff's pre- and post-accident life in his motion for summary disposition. We disagree. Defendant specifically argued that plaintiff failed to establish a "serious body impairment." As noted above, a "serious impairment of body function" is defined by MCL 500.3135(7) 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 added.) Moreover, defendant went on to specifically argue that any injuries suffered by plaintiff have not "affected his general ability to lead his normal life." We conclude that the issue was sufficiently raised by defendant.