

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL TERRY SOWER,

Plaintiff-Appellant,

v

MATTHEW SCOTT REYNOLDS and JODY
LYNN ADAMS,

Defendants-Appellees.

UNPUBLISHED

December 22, 2009

No. 291691

Ionia Circuit Court

LC No. 07-025505-NI

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

In this action to recover noneconomic damages under the no-fault act, plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). The primary issue on appeal concerns whether plaintiff's fractured femur affects his general ability to lead his normal life, as is necessary for recovery pursuant to MCL 500.3135 and *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's order granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

A plaintiff may recover noneconomic damages under the no-fault act only where the plaintiff has suffered "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). "[S]erious 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). To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person's normal life. *Kreiner, supra* at 130-131. In determining whether an impairment has affected the course of a plaintiff's normal life, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Id.* at 132-133. The court must analyze whether any difference has actually affected the plaintiff's general ability to conduct the course of his or her life. *Id.* at 133. 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.*

On July 13, 2005, plaintiff sustained “a comminuted^[1] fracture of the distal shaft of the right femur with displacement, separation, and overriding of fragments.” He underwent surgery the following day, which consisted of “intramedullary nailing,” where a rod is inserted into the bone marrow canal in the center of the femur. The fracture was reduced and a femoral nail was placed and locked. Plaintiff was hospitalized for approximately a week. He testified that he used crutches for approximately ten weeks and then used them part time after that. He attended numerous physical therapy sessions. Plaintiff’s physician restricted plaintiff from working until January 2, 2006, approximately six months after the accident. Plaintiff was placed on light duty restrictions for six weeks beginning December 19, 2006. He had no physician-imposed restrictions after the expiration of the December 2006 restrictions. He did not resume working until June 2007 because he could not find employment. At the time of his deposition in February 2008, he was working for another employer at a higher hourly wage.

Plaintiff testified regarding his daily experiences with pain in his leg, knee, and hip. However, in evaluating whether a plaintiff’s general ability to conduct the course of his normal life has been affected, the focus is not on the plaintiff’s subjective pain and suffering, but on injuries that actually affect the functioning of his body. *Netter v Bowman*, 272 Mich App 289, 295; 725 NW2d 353 (2006). Plaintiff testified about changes in his recreational activities, but he did not present physician restrictions that limited his activities in this regard. Self-imposed restrictions based on real or perceived pain do not establish the extent of residual impairment. *McDaniel v Hemker*, 268 Mich App 269, 282; 707 NW2d 211 (2005).

An injury need not be permanent to be an impairment of an important body function, but “it must be of sufficient duration to affect the course of a plaintiff’s life.” *Kreiner, supra* at 135. “[A]n impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff’s life is extensive.” *Williams v Medukas*, 266 Mich App 505, 508; 702 NW2d 667 (2005). However, the record in this case does not show that the injury’s effect on plaintiff’s life was extensive during the period of the physician’s restrictions. The trial court did not err in finding that plaintiff was unable to establish a serious impairment of body function because his injury did not affect his general ability to lead his normal life.

Plaintiff also asserts that his surgical scars are a permanent serious disfigurement, entitling him to noneconomic damages under MCL 500.3135(1). Where there is no material factual dispute concerning the nature and extent of an injury, whether it constitutes a permanent serious disfigurement is a question of law for the court. *Fisher v Blankenship*, ___ Mich App ___, ___ NW2d ___ (Docket No. 285852, issued October 22, 2009), slip op, p 6. “[A] threshold disfigurement is a long-lasting and significant change that mars or deforms the injured person’s appearance.” *Id.* at 7. “[W]hen determining whether a plaintiff has established a threshold disfigurement, courts must objectively examine the physical characteristics of the injury on a

¹ “Comminuted” means, “broken into several pieces, denoting especially a fractured bone.” *Stedman’s Medical Dictionary*.

case-by-case basis and determine whether, in light of common knowledge and experience and considering the full spectrum of the injured person's life activities, the injury's physical characteristics significantly mar or deform the injured person's overall appearance." *Id.*

Plaintiff has submitted photographs of his scars, but the scars are difficult to detect in the photographs. There is no basis for concluding that the scars significantly mar or deform plaintiff's overall appearance. Therefore, plaintiff cannot meet the threshold for recovery of noneconomic damages on the basis of permanent serious disfigurement.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck