STATE OF MICHIGAN

COURT OF APPEALS

TERRY LEE ATCHISON, Plaintiff-Appellant,	UNPUBLISHED November 13, 2003
v	No. 242205 Kent Circuit Court
ELNA JEAN WAKEMAN, MICHELLE ELAINE WAKEMAN, and CONNIE MARIE ATCHISON, a/k/a CONNIE MARIE HUDDLESTON, Defendants-Appellees.	LC No. 00-002997-NI

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

PER CURIAM.

Plaintiff appeals from a circuit court order granting defendants' motion for directed verdict in this automobile negligence action. We affirm.[1]

Plaintiff first contends that the trial court erred in granting defendants' motions for directed verdict. This Court reviews motions for directed verdict de novo, *Sniecinski v Blue Cross and Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003), and "is to

[1] Defendant Atchison contends that plaintiff forfeited his appeal by right because he did not file a copy of his claim of appeal with the circuit court as proscribed by MCR 7.204 within the twenty-one-day time period. MCR 7.203(A) states that a party may appeal by right a final order of the circuit court. "Unless otherwise provided by law, an appeal of right must be taken within twenty-one days after entry of the judgment or order appealed from. . . ." *Williams v Arbor Home, Inc*, 254 Mich App 439, 441; 656 NW2d 873 (2002), vacated on other grounds, 469 Mich 893; 669 NW2d 814; MCR 7.204(A)(1). Moreover, within that time period, the appellant must file a copy of the claim of appeal in the circuit court that issued the order he seeks to appeal. MCR 7.204(E)(1). However, this Court may, in its discretion, "accept the pleadings as an application for leave to appeal, grant the appeal, and resolve the appealed issue on the merits." *Waatti and Sons Electric Co v Dehko*, 230 Mich App 582, 585; 584 NW2d 372 (1998), after remand 249 Mich App 641; 644 NW2d 383 (2002). We so exercise our discretion in this case, treating plaintiff's untimely claim of appeal as an application for leave to appeal, which is granted.

examine the evidence and all reasonable inferences that may be drawn from it in the light most favorable to the nonmoving party. Only if the evidence so viewed fails to establish a claim as a matter of law should the motion be granted." *Clark v Kmart Corp*, 465 Mich 416, 418-419; 634 NW2d 347 (2001) (citations omitted).

Under the no-fault automobile insurance act, MCL 500.3101 *et seq*., tort liability for non-economic damages is limited to instances in which the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1); *Hardy v Oakland Co*, 461 Mich 561, 565; 607 NW2d 718 (2000). In the present case, plaintiff alleges to have met the above threshold by demonstrating a serious impairment of body function.

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). This definition can be broken down into three criteria that the plaintiff must establish: (1) an objectively manifested impairment, (2) of an important body function, (3) affecting the plaintiff's general ability to lead his normal life. *Kreiner v Fischer* (*On Remand*), 256 Mich App 680, 684; __ NW2d __ (2003). Whether plaintiff has suffered a serious impairment of an important body function is a question of law for the court to decide if there is no factual dispute, or only an immaterial one, concerning the nature and extent of the injuries. MCL 500.3135(2)(a); *May v Sommerfield*, 239 Mich App 197, 201; 607 NW2d 422 (1999), after remand 240 Mich App 504; 617 NW2d 920 (2000).[2] Therefore, "the issue [of] whether plaintiff suffered a serious impairment of body function should be submitted to the jury only when the trial court determines that an 'outcome-determinative genuine factual dispute' exists." *Miller*, *supra* at 247 (citations omitted).

In granting a directed verdict in favor of defendants, the trial court ruled that plaintiff had not established the third prong of the impairment of an important body function test. Pursuant to MCL 500.3105, the third prong requires that the impairment relate to a person's general ability to lead his normal life. *Kreiner*, *supra* at 687. Thus, the lifestyle impact requirement is to be assessed subjectively, and the proper approach for the trial court is to compare the plaintiff's lifestyle before and after the accident to determine "whether a factual dispute existed with respect to the extent of plaintiff's injuries." *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Plaintiff first challenges the trial court's ruling with respect to his allegations that his injuries affected his familial, recreational, and sex life activities. We believe that the trial court's ruling was appropriately based on plaintiff's own admissions, rather than disputed facts, and is firmly within the precedent set forth by this Court in *Miller*, *supra*. Specifically, in *Miller*, this Court found that the plaintiff's normal life had not been altered when she admittedly could "perform all the same activities that she did before the accident," and hadn't "demonstrated that any aspect of her day-to-day activities ha[d] been curtailed as a result of her injury." *Id*. at 249-250. Furthermore, the *Miller* Court held that the plaintiff's allegations that she was no longer

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[2] Because plaintiff filed his suit in 2000, the no-fault act amendments enacted as part of 1995 PA 222 apply to his suit. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001).

able to knit and had to type one-handed at times did not equate to an alteration of the plaintiff's general ability to lead her normal life. *Id*. In this case, we believe that plaintiff's allegations that his activities have been altered are analogous to the plaintiff's limitations in *Miller*, since plaintiff's admissions establish that he is still able to perform each of these activities.[3]

In regard to plaintiff's work life, the trial court found that, although he may not be able to perform the same job as before the accident, his activities since the accident support the conclusion that plaintiff is able to work. Moreover, the judge took into account the fact that plaintiff unabashedly admitted that he had not looked for work (with one possible exception), and that there was no evidence in the record to support his claims of dyslexia or that he would make less money performing light duty work of the type he did before working at American Bumper. Therefore, the court concluded that there was insufficient evidence for a reasonable jury to conclude that plaintiff's injuries had affected his general ability to lead a normal life with respect to employment.

Plaintiff challenges this aspect of the trial court's ruling by relying on this Court's holding in *Kreiner*, *supra*. In *Kreiner*, the plaintiff testified that he continued to work as a carpenter after incurring injuries in an automobile accident, but that some of his tasks were painful and that the pain limited the time he could work on a project, the types of projects he could do, and the length of his work day. *Id*. at 687. This Court stated that these facts, if true, would demonstrate that the plaintiff suffered a serious impairment of body function. *Id.* at 689.

However, the facts of this case are easily distinguishable from those in *Kreiner*. The plaintiff in *Kreiner* had been a carpenter for approximately twelve years before his injuries. *Id.* at 684. Thus, "[p]laintiff's employment was not an insignificant and occasional event in his life but was instead a part of his normal routine." *Id*. at 688 n 6. In *Kreiner*, the "[p]laintiff's normal life consisted of, in large part, working as a carpenter." *Id*. In this case, however, plaintiff admitted that he had worked at American Bumper for only six months before his injuries, and previously had worked in three different jobs that he would consider to be of the "light duty" type the doctors permitted him to perform since the accident. Thus, unlike in *Kreiner*, plaintiff's normal life did not consist of lifting and sanding bumpers.

The trial court properly determined, based primarily on plaintiff's own admissions, the issue of serious impairment of an important body function as a matter of law rather than submitting it to the jury. Moreover, the court properly concluded that plaintiff's general ability

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[3] Plaintiff admitted that he continues to engage in these activities. Plaintiff admitted that he still hunts with a bow and firearm every year, continues to fish in both lakes and streams, and continues to take his family camping each year where he sets up the tent and campsite. Plaintiff has also fathered two children since the accident. Furthermore, it is undisputed that, despite telling his doctors that he could sit for no longer than ten minutes at a time without back pains and, therefore, had trouble driving, plaintiff admitted to driving twenty-four hours to Florida to go fishing. Plaintiff also admitted that he still takes care of his three children and does many, if not all, of the household duties that he performed before the accident.

to lead his normal life had not been affected. Thus, we conclude that the record in this case supports the trial court's grant of a directed verdict to defendants.

Plaintiff next asserts that he was improperly restricted in presenting proof to establish that he had suffered a serious impairment of an important body function under MCL 500.3135 based on the trial court's exclusion of testimony in which an expert was asked to state his opinion regarding whether plaintiff's ability to lead his normal life had been affected. Plaintiff has abandoned this issue, however, because he has offered this Court with no facts, argument or authority on which to review the trial court's ruling. *Head v Phillips Camper Sales and Rental Inc*, 234 Mich App 94, 115-116; 593 NW2d 595 (1999). We will not search for authority or arguments to sustain a party's position. *Guardiola v Oakwood Hospital*, 200 Mich App 524, 536; 504 NW2d 701 (1993).

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Christopher M. Murray