

STATE OF MICHIGAN
COURT OF APPEALS

JAMES COMPTON,

Plaintiff-Appellant,

v

SYLVIA LOUISE MORBITZER and
CITIZENS INSURANCE COMPANY OF
AMERICA,

Defendants,

and

PENNSYLVANIA LUMBERMANS
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

November 17, 2005

No. 263928

Oakland Circuit Court

LC No. 2004-061105-NI

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's order granting defendant Lumbermans Insurance Company's motion for summary disposition pursuant to MCR 2.116(C)(10) in this case involving plaintiff's claim for noneconomic damages for injuries resulting from a motor vehicle accident. The trial court granted the motion on the basis that plaintiff failed to show that his injuries affected his general ability to lead his normal life, as is necessary to establish a serious impairment of body function. MCL 500.3135(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo the trial court's order granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

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).¹ The issue whether a person has suffered a serious impairment of body function is a question of law for the trial court to decide if the court determines that there is no factual dispute concerning the nature and extent of the person’s injuries or that there is a factual dispute concerning the nature and extent of the person’s injuries, but the dispute is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a). “[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).

In this case, there was no dispute that plaintiff had objective manifestations of an injury to his foot that was causally linked to the accident. Furthermore, there was no dispute that the use of plaintiff’s foot is an important body function. The sole issue presented is whether the trial court correctly determined that plaintiff’s injuries did not affect his general ability to lead his normal life.

To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person’s entire normal life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). In determining whether the course of a person’s normal life has been affected, 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 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 133. “Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish” the extent of the residual impairment. *Id.* at 133 n 17; *McDaniels v Hemker*, ___ Mich App ___; ___ NW2d ___ (Docket No. 263150, issued September 27, 2005).

In this case, we agree with the trial court that the two-month period of plaintiff’s recuperation is inadequate by itself to establish a serious impairment of an important body function. “[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). “While an injury need not be permanent, it must be of sufficient duration to affect the course of a plaintiff’s life.” *Kreiner, supra* at 135. Plaintiff was unable to work for two months and relied on his mother to drive him, prepare his food, make his bed, and occasionally help him to the bathroom door. This level of impairment for this period of time is insufficient to show an “extensive” effect on plaintiff’s life. *Williams, supra* at 508.

¹ We note that plaintiff sought to obtain uninsured motorist benefits under the pertinent policy. This policy provided that the insurer would pay the sums the insured is “legally entitled” to recover. Use of the term “legally entitled” triggers MCL 500.3135. “[P]ursuant to MCL 500.3135(1) . . . uninsured motorists are subject to tort liability for noneconomic loss only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” *Auto Club Ins Ass’n v Hill*, 431 Mich 449, 466; 430 NW2d 636 (1988).

Plaintiff's testimony about the pain he continued to suffer in his foot and the changes in his activities is also insufficient to establish residual impairment under the circumstances of this case. Plaintiff described discomfort in his foot that caused him to limp and testified that there were changes in his recreational and social activities. The evidence did not establish that these activities were important in his life before the accident. Cf. *Kreiner, supra* at 134 n 19; *Williams, supra* at 509. Additionally, there was no evidence of physician-imposed restrictions. Considering the lack of physical "incapacity" and the lack of physician-imposed restrictions relative to pain and the extent of the residual impairment, along with viewing the totality of the circumstances, we find that plaintiff has failed to show that his injuries affected his general ability to lead his normal life, as is necessary to establish a serious impairment of body function under MCL 500.3135(1). *McDaniel, supra*, slip op at 8-9.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter