STATE OF MICHIGAN

COURT OF APPEALS

SAL MEHDI,

Plaintiff-Appellant,

v

SUSAN ANN GARDNER and SAMANTHA JOHANNA GARDNER,

Defendants-Appellees,

and

FARM BUREAU GENERAL INSURANCE COMPANY,

Defendant.

UNPUBLISHED
March 17, 2015

No. 319630
Macomb Circuit Court
LC No. 2012-004904-NI

Before: DONOFRIO, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals by delayed leave granted an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

On November 21, 2011, while waiting at a red light, plaintiff's van was struck from behind by a vehicle operated by Susan Gardner and owned by Samantha Gardner. The impact was not severe enough to cause plaintiff's van to hit the vehicle stopped in front of him at the red light. Although the rear of plaintiff's van was dented, the police report indicated that both vehicles were drivable after the collision. Plaintiff testified that after the accident, he developed a headache and neck and lower back pain and went to the hospital.

A CT scan from the evening of the accident showed plaintiff's lower cervical spine exhibited "[m]ild degenerative changes . . . [with] no evidence of acute fracture or subluxation." A physician diagnosed plaintiff with whiplash and prescribed ibuprofen and muscle relaxant. On November 22, 2011, plaintiff followed up with his primary care physician, complaining of headaches and pain in his neck and throat. His physician diagnosed him with whiplash and a neck sprain and prescribed Tylenol with codeine and Valium as a muscle relaxant. On November 23, 2011, plaintiff returned to his physician with neck pain, and was diagnosed with

continuing pain from whiplash, was given a Toradol injection, and was told to continue taking his medications. Plaintiff's medical records revealed he had a history of fatigue and weakness, difficulty breathing, headaches, and muscle and joint pain. On November 24, 2011, plaintiff returned to the hospital complaining of nausea and dizziness. Doctors determined that plaintiff's condition was a result of sensitivity to codeine and Valium and changed his medications.

On December 12, 2011, plaintiff had an MRI of his spine that showed "[m]ultilevel degenerative disc disease and facet joint arthropathy" and "mild to moderate disc bulge with focal left foraminal disc protrusion component" at L4-L5. On December 16, 2011, plaintiff had another spinal MRI that showed "mild degenerative changes" and "a bulging disc at C6-7." Neither of the reports identified the motor vehicle accident as the cause of plaintiff's conditions. On April 3, 2012, plaintiff sought treatment for shoulder pain, and a doctor concluded there was "[s]mall fluid within [plaintiff's] proximal biceps tendon." Thereafter, plaintiff complained of numbness in his right hand, and on December 6, 2012, plaintiff underwent a nerve conduction study that showed some nerve abnormalities along his right wrist. Plaintiff was diagnosed with cervical radiculopathy. At his deposition, plaintiff complained of pain in his back, neck, knees, and shoulders, numbness in his legs, genitalia, and right arm, headaches, and memory loss.

On appeal, plaintiff argues that the lower court erred in granting defendant's motion for summary disposition. We review de novo a trial court's ruling on a motion for summary disposition. *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When reviewing a motion under MCR 2.116(C)(10), we consider the pleadings, admissions, affidavits, and other record evidence in a light most favorable to the party opposing the motion to determine whether a genuine issue of material fact exists warranting a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). A genuine issue of material fact exists when the record reveals an issue upon which reasonable minds could differ. *West*, 469 Mich at 183.

Under the no-fault act, MCL 500.3101 *et seq.*, tort liability for noneconomic loss is limited to cases in which an injured plaintiff "has suffered death, serious impairment of body function, or permanent serious disfigurement" that was "caused by [the] ownership, maintenance, or use of a motor vehicle." MCL 500.3135(1). The statute defines a "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." MCL 500.3135(5). Courts may determine whether a person suffered a serious impairment of body function as a matter of law if (1) there is not a factual dispute concerning the nature and extent of the person's injuries, or (2) there is a factual dispute concerning the nature and extent of the person's injuries, but that dispute is not material to the determination of whether the person suffered a serious impairment of body function. MCL 500.3135(2)(a).

In this case, we detect no genuine factual dispute concerning the nature and extent of plaintiff's injuries caused by the vehicle accident. Although MRIs and a nerve conduction study performed after the accident revealed medical abnormalities in plaintiff's nerves and a bulging spinal disc, which account for plaintiff's complaints of continuing pain, plaintiff presented no evidence linking his conditions to the vehicle accident. That a condition temporally follows an

event is not in itself evidence of causation. *West*, 469 Mich at 186. Thus, no genuine issue of material fact prevents us from deciding whether plaintiff demonstrated an injury sufficient to satisfy the tort liability threshold for a serious impairment of body function. *McCormick v Carrier*, 487 Mich 180, 195; 795 NW2d 517 (2010); MCL 500.3135(5).

In *McCormick*, 487 Mich at 195, our Supreme Court held that to demonstrate a serious impairment of body function, a plaintiff must show: "(1) an objectively manifested impairment (2) of an important body function that (3) affects the person's general ability to lead his or her normal life." Under the first *McCormick* prong, a plaintiff must show that injuries resulting from a vehicle accident were "evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function." *Id.* at 196. The focus "is not on the injuries themselves, but how the injuries affected a particular body function." *Id.* at 197 (quotation marks and citation omitted). In *McCormick*, a plaintiff established an objectively manifested impairment where he suffered a broken ankle as the direct result of a vehicle accident, had difficulty walking, crouching, climbing, and lifting weights, and had continuing pain and a limited range of ankle motion even 14 months after the injury. *Id.* at 185-186, 216.

In contrast, plaintiff presented no evidence that he suffered an objective injury resulting from the vehicle accident. The only documented manifestations of plaintiff's injuries directly attributable to the accident were subjective symptoms of neck and back pain, headaches, and a diagnosis of whiplash in November 2011. Although objective tests later revealed nerve abnormalities and a bulging spinal disc, plaintiff presented no evidence that the accident caused these conditions. Accordingly, plaintiff failed to advance evidence of an objective impairment caused by the accident sufficient to satisfy *McCormick*'s first prong.

Moreover, although we generally agree that the use of one's neck and back are important body functions under *McCormick*'s second prong,[1] plaintiff has not presented evidence showing that his conditions, even if caused by the accident, affected his ability to live his normal life. In order to establish *McCormick*'s third prong, a plaintiff must show that an accident-related injury had "an influence on some of the person's capacity to live in his or her normal manner of living." *McCormick*, 487 Mich at 202. This inquiry "necessarily requires a comparison of the plaintiff's life before and after the incident." *Id*. The *McCormick* Court noted three caveats: (1) the plaintiff's general ability to lead his pre-accident normal life need only be affected, not destroyed, (2) the focus is on whether the impairment affected the plaintiff's ability to maintain his normal manner of living, not whether some of his manner of living has itself been affected, and (3) the impairment need not be permanent. *Id.* at 202-203.

In this case, plaintiff testified that his ability to work, engage in recreational activities, and do household chores was affected by his back pain, headaches, and nerve problems. Plaintiff testified that he jogged and played pick-up soccer before the car accident; however, medical records indicate plaintiff's pre-accident activity level was "sedentary" and plaintiff provided no evidence that he participated in physical sports with any frequency. Plaintiff testified that he

[1] See *Harris v Lemicex*, 152 Mich App 149, 153; 393 NW2d 559 (1986).

could no longer do household chores after the accident, and provided doctor slips disabling him from doing housework and driving. Yet, plaintiff testified that he continued to drive, traveled to Canada three or four times a week, fed himself, dressed himself, and did his own shopping. When asked whether he could do dishes, plaintiff stated, "I mean, I can. I can do dishes, but I would have the pain. I'm not paralyzed." Plaintiff did not testify that he could not do laundry, but only stated the he had pain if he did laundry.

Plaintiff testified that he worked full-time before the accident, that he took three or four months off after the accident, and that he now works only 10 to 20 hours per week. Plaintiff and his wife are the only employees at a family business that installs security cameras and point of sale systems in gas stations. When asked about the three to four month employment period following the accident, plaintiff testified that he did not work because his "business stopped completely" because "there was another company . . . that was taking the work." Plaintiff's wife also did not work during this period due to the competition. Plaintiff testified that when he returned to work, he did not do jobs himself because most or all of the business's work is subcontracted out to third parties. Although plaintiff claimed to work full-time before the accident, the employment records he provided do not show that he worked full-time, and reveal that he did not log any hours or receive any pay in July, August, or September of 2011. Payment records indicated that plaintiff made a higher wage after the accident than he did before it. When viewed in a light most favorable to plaintiff, this evidence does not establish a genuine issue of material fact that plaintiff's injuries affected his ability to lead his normal life.

Affirmed.

/s/ Pat M. Donofrio
/s/ Michael J. Riordan
/s/ Michael F. Gadola