

**Court of Appeals, State of Michigan**

**ORDER**

Malcolm S Garcia v Richard M Walker

Docket No. 273773

LC No. 05-005749-NI

Mark J. Cavanagh  
Presiding Judge

Kathleen Jansen

Stephen L. Borrello  
Judges

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The Court orders that the motion for reconsideration is GRANTED, and this Court's opinion issued May 8, 2007, is hereby VACATED. A new opinion will be issued.

Judge Cavanagh would deny the motion for reconsideration.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 25 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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MALCOLM S. GARCIA,

Plaintiff-Appellant,

v

RICHARD M. WALKER,

Defendant-Appellee.

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UNPUBLISHED

May 8, 2007

No. 273773

Jackson Circuit Court

LC No. 05-005749-NI

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this automobile negligence action. Plaintiff challenges the trial court's determination that he did not suffer a serious impairment of body function, MCL 500.3135(7), because his injuries did not affect his general ability to lead his normal life. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions, and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (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). "[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).

Plaintiff presented evidence of objectively manifested injuries that impaired important body functions. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). X-rays and MRIs showed injuries to his left foot, ankle, and Achilles tendon, which affected plaintiff's

ability to walk and stand. The dispute centered on whether the impairment affected plaintiff's general ability to lead his normal life.

In answering this question, the court is to compare the plaintiff's life before and after the accident and consider "the significance of any affected aspects on the course of plaintiff's overall life." *Id.* at 132-133. Factors to consider include "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Id.* at 133. "Merely 'any effect' on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his normal life." *Id.* (emphasis in original; footnote omitted). In other words, "[a] negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Id.* at 137. An injury need not be permanent in order to be serious, *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000), but it must be of sufficient duration to affect the course of a plaintiff's life. *Kreiner, supra* at 135. An impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff's life is extensive. *Id.* at 134.

The evidence showed that plaintiff received no significant medical treatment for the first six months after he was injured. He used a walking cast between December 23, 2004, and January 13, 2005, underwent four weeks of physical therapy in January and February 2005, and was on work restrictions for eight weeks between December 2004 and February 2005. Plaintiff did not receive further medical treatment until December 2005, when his Achilles tendon was surgically debrided. Plaintiff was in a cast between December 19, 2005, and January 13, 2006, underwent four weeks of physical therapy in January and February 2006, and was disabled from working for seven weeks between December 2005 and February 2006. Although plaintiff testified that continuing pain left him unable to work because he could not walk or stand for prolonged periods of time, self-imposed restrictions based on real or perceived pain do not establish a residual impairment. *Kreiner, supra* at 133 n 17. The trial court did not err in concluding that plaintiff's injuries did not affect his general ability to lead his normal life.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Stephen L. Borrello