

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD LEAPHART,

Plaintiff-Appellant,

January 6, 1994

v

No. 147793

LC No. 91101429-NI

CITY OF DETROIT, TRANSPORTATION
DEPARTMENT, JAMES ATKINS, and
PATRICK DENNIS BUSSEY,

Defendant-Appellees.

Before: Brennan, P.J., and Reilly and Danhof,* JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition to defendants. We reverse.

Plaintiff first contends that summary disposition should not have been granted as to his noneconomic loss damages because reasonable minds could differ as to whether his injury was a serious impairment of a body function. The trial court ruled that plaintiff's injuries were too minor to meet the threshold articulated in DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986). We disagree.

The evidence submitted by plaintiff in response to defendant's motion indicates that plaintiff's ankle injury may have resulted in a serious impairment of a body function. More than a year after the injury, plaintiff testified that he could not walk a block without pain. Furthermore, the doctor's report dated November 29, 1990, indicated that plaintiff suffered a severe ankle sprain and was placed in a cast for eight weeks. In the doctor's opinion, plaintiff was disabled from doing any work involving constant and repetitive standing, walking or squatting. Therapy would not improve the condition, only prevent it from deteriorating. Viewing this evidence in the light most favorable to the plaintiff, we hold that reasonable minds could differ as to whether plaintiff's injury constituted a serious impairment of a body function. Accordingly, the issue should have been resolved by a jury.

Plaintiff also contends on appeal that the trial court erred in dismissing the entire case because the complaint requested economic loss damages which do not require a finding of a serious impairment of a body function. Defendants' motion did not address plaintiff's request for economic loss damages, and the trial court did not address economic loss damages separately. Consequently, we decline to address the issue. Matters not presented to or considered by the trial court are generally not considered on appeal. Hunters Pointe Partners Limited Partnership v United States Fidelity & Guaranty Co, 177 Mich App 745, 750; 442 NW2d 778 (1989). Because of our resolution of the first issue, this aspect of plaintiff's argument need not be considered here.

Reversed.

/s/ Thomas J. Brennan
/s/ Maureen Pulte Reilly
/s/ Robert J. Danhof

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.