

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL GREGORY SANDERS,,

Plaintiff-Appellant,

v

KENNETH CANTIN,

Defendant-Appellee.

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UNPUBLISHED

September 16, 2003

No. 240065

Livingston Circuit Court

LC No. 01-018437-NI

Before: Owens, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals the trial court's grant of summary disposition to defendant arising from plaintiff's claim that he suffered a serious impairment of body function and a permanent serious disfigurement under MCL 500.3135. We affirm in part and reverse in part.

Plaintiff was driving his motorcycle when an oncoming car driven by defendant turned left in front of him. Plaintiff attempted to avoid a collision, but instead struck a corner of the defendant's vehicle. Plaintiff was thrown from his motorcycle and came to rest after skidding across the pavement. As a result of the accident, plaintiff suffered a "boxer's fracture" of his left hand, a 15-cm laceration and permanent scarring to his left flank area, and a laceration to his right arm. Plaintiff also had extensive loss of skin due to his slide across the pavement. Plaintiff missed six weeks of work while recuperating. Initially, he was unable to perform daily activities without the assistance of family members. Within two weeks however, he was able to complete routine household chores. Plaintiff experiences virtually no physical limitations following his recovery.

Plaintiff claims that summary disposition for defendant was improper because plaintiff did in fact suffer a serious impairment of body function and a permanent serious disfigurement. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of a body function, or permanent serious disfigurement." MCL 500.3135. If there is no factual dispute concerning the nature and extent of the person's injuries, the issue of whether a person has suffered a serious impairment of body function or permanent serious disfigurement is a question of law for the

court. MCL 500.5135(2)(a). We will consider separately claims of serious impairment of body function and permanent serious disfigurement.

The term “serious impairment of body function” is defined 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(7); See also *Miller v Purcell*, 246 Mich App 244, 250; 617 NW2d 920 (2000). When examining an impairment to determine if it is serious, the trial court should consider the following nonexhaustive list of factors: extent of the injury, treatment required, duration of disability, extent of residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000) Even though plaintiff was off work for six weeks, he was able to perform normal household duties within two weeks. His record of treatment was not extraordinary, and the healing process lacked any substantial complications leading to a disruption of his normal life. Despite having a permanent scar, plaintiff has an excellent prognosis for recovery. The only maladies the plaintiff complains of following recovery are an occasional pain in his hand, which he can “shake off”, and a decreased ability to sustain his grip while water “tubing.” Neither of these consequences rises to the level of impairing his general ability to lead a normal life. After review of the record, we conclude that plaintiff has not shown that there is any factual issue concerning the nature and extent of the injury, nor has he shown as a matter of law that he has suffered a serious impairment of body function under MCL 500.3135. On this issue, we affirm the trial court’s grant of summary disposition for the defendant.

Whether a scar is a permanent serious disfigurement depends on its physical characteristics rather than its effect on the plaintiff’s ability to lead a normal life. *Kosack v Moore*, 144 Mich App 485, 491; 375 NW2d 742 (1985). The record clearly and without material contradiction indicates that the plaintiff’s scar is a permanent disfigurement; therefore, the only issue for this Court to determine is whether the scar is a serious disfigurement as well. Whether the scar is serious is a question to be answered by resorting to common knowledge and experience. *Nelson v Meyers*, 146 Mich App 444, 446, n2; 381 NW2d 407 (1985). We find that the scar in question is indeed serious. It is approximately six inches long, raised, and located on plaintiff’s left abdomen above the waistline. The scar is drastically darker than the surrounding skin, making it immediately apparent and distinguishable. While the trial court reasoned that the scar was not serious because it was in an area “that would normally be covered,” we disagree with that rationale. The proper inquiry relates to the physical characteristics of the scar, *Kosack, supra*, not the ability of the scar to be covered. Furthermore, the fact that the trial court noted that the scar was “on a man” bears no relationship to any relevant factor. Men frequently doff their shirts in warm weather as well as when participating in athletic and bathing activities. Should plaintiff choose to participate in such activities, his scar would be clearly evident to a casual observer due to its physical characteristics. Upon de novo review, we find that the plaintiff’s scar is a permanent serious disfigurement. *Spiek, supra*; MCL 500.3135. Because there is no genuine issue regarding the extent or effects of plaintiff’s injuries, this is not a matter for a jury. Therefore, we reverse the trial court’s grant of summary disposition for defendant on the issue of permanent serious disfigurement and order summary disposition for the plaintiff on the threshold issue of permanent serious disfigurement.

Affirmed in part, reversed in part, and remanded to the trial court for a damages trial on plaintiff's claim of permanent serious disfigurement. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Michael J. Cavanagh

/s/ Patrick M. Meter