

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EDWARD JOHNSON,

Plaintiff-Appellant,

v

RELIANT INSURANCE COMPANY, f/k/a  
BRISTOL WEST INSURANCE GROUP,

Defendant,

and

ENTERPRISE RENT A CAR, d/b/a ENTERPRISE  
LEASING COMPANY OF DETROIT, and  
LUCIANA EISSA,

Defendants-Appellees.

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UNPUBLISHED

March 15, 2005

No. 251562

Oakland Circuit Court

LC No. 2002-043223-NI

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition and denying his countermotion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 9, 2001, a vehicle driven by defendant Eissa struck a vehicle driven by plaintiff. Plaintiff sustained a broken finger on his left hand, a torn rotator cuff, and bulging disks for which he underwent a cervical laminectomy. The surgery left a 4 ½-inch scar on the back of his neck. He filed suit alleging that the injuries he sustained in the accident constituted a serious impairment of body function, and that the scar constituted a permanent serious disfigurement. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff failed to present any evidence that the injuries he sustained affected his general ability to lead his normal life.<sup>1</sup> The trial court granted defendants' motion for summary

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<sup>1</sup> At the time of the accident, plaintiff was employed intermittently as a part-time handyman, but  
(continued...)

disposition and denied plaintiff's counter-motion for summary disposition, concluding that the evidence did not create a question of fact whether plaintiff's injuries affected his general ability to lead his normal life or whether the surgical scar constituted a permanent serious disfigurement. We review de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no material factual dispute concerning the nature and extent of the injuries. MCL 500.3135(2)(a). A serious impairment of body function is "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). "[F]or an impairment to be objectively manifested, there must be a medically identifiable injury or condition that has a physical basis . . . ." *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002) (affirming and quoting SJ12d 36.11). Plaintiff has satisfied us that his torn rotator cuff, broken finger, and bulging disks were medically identifiable injuries, but he fails to present any evidence that the injuries themselves affected his general ability to lead his life.<sup>2</sup>

We first note that pain, in itself, is not an objectively manifested condition and cannot be relied on to establish the existence of a serious impairment of body function. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). Likewise, "self-imposed restrictions . . . based on real or perceived pain" are alone insufficient to create the existence of lingering effects indicative of a serious impairment of body function. *Id.* at 133 n 17. Therefore, our review is limited to how plaintiff's various injuries physically and objectively affected his life.

Following the accident, x-rays revealed a broken finger on plaintiff's left hand, and an MRI revealed bulging discs in his neck. The ability to use the neck and back is generally considered an important body function, see *Chumley v Chrysler Corp*, 156 Mich App 474, 482; 401 NW2d 879 (1986), but in this case, plaintiff has failed to present any evidence that his surgery six months after the accident failed to correct any problems he was having with his neck and back. Plaintiff also failed to present any evidence concerning the impact any of his injuries had on his life. Plaintiff testified that after the accident he was able to engage in the same recreational activities as before, with the exception of playing video games. While plaintiff claimed that he could not do the same proportion of chores, he testified that his girlfriends simply increased the proportion they did. Plaintiff testified that he no longer did occasional work as a handyman, but he discounted the value of this work, and no physician had placed any restrictions on plaintiff's ability to work.<sup>3</sup> He continued to receive the same disability benefits

(...continued)

in his deposition he stated that the work was not important to him. He has received social security disability benefits since 1994.

<sup>2</sup> We also note that plaintiff suffered back injuries while he was in the Army Reserves, but the trial court did not dismiss plaintiff's claim based on causation and we need not address that issue.

<sup>3</sup> Plaintiff's submission of an affidavit in which he stated that work was an important part of his life and that he was limited in other activities he enjoyed before the accident amounts to an improper attempt to create a factual dispute by authoring an affidavit that contradicted his own sworn testimony. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 480; 633 NW2d 440 (2001). Therefore, it fails to create a material question of fact.

from Social Security that he had been receiving since 1994. In light of our Supreme Court's decision in *Kreiner*, plaintiff has failed to create a material issue of fact regarding his general ability to lead his normal life. Therefore, the trial court properly granted defendants' motion for summary disposition.

Whether the 4 ½-inch vertical scar on the back of plaintiff's neck is a permanent serious disfigurement is a question we answer by resorting to common knowledge and experience. *Nelson v Myers*, 146 Mich App 444, 446 n 2; 381 NW2d 407 (1985). While plaintiff's surgical scar might ruin the career of a young jewelry model, the record reflects that plaintiff wears many scars as a consequence of his long life in a tough city. He has been shot three times and stabbed twice. He has had several toes amputated because of complications with diabetes. During his military service, he received a severe head injury that left him with a self-described "dent" in his head. In contrast to these disfigurements, the scar on the back of his neck is not particularly disturbing or egregious. It is invisible when facing him, and does not appear jagged, keloided, unusually discolored, or otherwise unsettling.<sup>4</sup> Therefore, the trial court correctly concluded that, as a matter of law, the surgical scar did not constitute a permanent serious disfigurement.

Affirmed.

/s/ Christopher M. Murray  
/s/ Jane E. Markey  
/s/ Peter D. O'Connell

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<sup>4</sup> While certainly not decisive, we note that the proliferation of corrective back surgeries in recent decades makes these types of scars less serious simply because they are more commonplace.