

STATE OF MICHIGAN
COURT OF APPEALS

DERICK ROSS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee,

and

ANTONIO BRADFORD,

Defendant.

UNPUBLISHED

May 12, 2005

No. 260402

Wayne Circuit Court

LC No. 03-324156-CK

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

In this action to recover noneconomic damages under the no-fault act arising from a collision with an uninsured vehicle, plaintiff appeals as of right from the trial court's order granting summary disposition to defendant. The court determined that a scar on plaintiff's face did not constitute permanent serious disfigurement and that plaintiff failed to show that his injuries affected his general ability to lead his normal life, as is necessary to establish a serious impairment of body function. MCL 500.3135(1). On appeal, plaintiff challenges the trial court's determinations on those issues and also contends that the trial court's ruling was erroneous where it earlier granted a default judgment in favor of plaintiff against defendant Bradford, the driver of the uninsured vehicle involved in the collision. We affirm.

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). The issue whether a person has suffered a serious impairment of body function is a question of law for the trial court to decide if the court determines that there is no factual dispute concerning the nature and extent of the person's injuries or that there is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2)(a). "[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). In this case, defendant did not contest whether there were objective manifestations of an impairment of an important body function, but focused on whether plaintiff's injury affected his general ability to lead his normal life.

To meet the requisite threshold, the impairment of an important body function must affect the course or trajectory of a person's entire normal life. *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). In determining whether the course of a person's normal life has been affected, a court should compare the plaintiff's life before and after the accident and evaluate the significance of any changes on the course of the plaintiff's overall life. *Id.*, pp 132-133.

In this case, plaintiff indicated in his deposition that there were activities, such as cutting the grass, playing, wrestling with his daughter, taking the garbage out, washing the car, and cleaning the house, that had been affected by his injury, but stated that he could perform those activities with difficulty. He did not identify any activities that he was unable to perform. His employment status was unchanged. He presented no evidence of any physician-imposed restrictions¹; self-imposed restrictions that are based solely on pain are insufficient to establish residual impairment. *Kreiner, supra*, p 133 n 17. Because plaintiff failed to present evidence showing that his injuries affected his general ability to lead his normal life, the trial court did not err in determining that the issue whether plaintiff suffered a serious impairment of body function was a question of law under the circumstances, MCL 500.3135(2)(a), and correctly granted summary disposition for defendant.

Plaintiff also contends that a one-centimeter scar in the middle of his forehead constitutes a "permanent serious disfigurement" entitling him to recover noneconomic damages. MCL 500.3135(1). The trial court explained that although the scar may be permanent, "it's really almost unnoticeable," and described it as "barely perceptible." Whether a plaintiff has suffered permanent serious disfigurement is a question of law if the court finds that there is no factual dispute concerning the nature and extent of the person's injuries or if there is a factual dispute, the dispute is not material to the determination. MCL 500.3135(2)(a)(ii). Here, the trial court correctly concluded that the scar was not a permanent *serious* disfigurement and properly granted defendant's motion for summary disposition. Cf. *Petaja v Guck*, 178 Mich App 577, 579-580; 444 NW2d 209 (1989) ("hardly discernible" scar below the lip); *Kanaziz v Rounds*, 153 Mich App 180, 186-187; 395 NW2d 278 (1986) (one-inch scar to eyelid); *Nelson v Myers*, 146 Mich App 444, 446 n 1; 381 NW2d 407 (1985) (three-centimeter scar under the eye).

¹ Although plaintiff attached a disability certificate and a client activity checklist to his motion for reconsideration, we do not consider those documents for purposes of determining whether the trial court erred in granting summary disposition because they were not submitted to the trial court before it granted defendant's motion. See *Maiden v Rozwood*, 461 Mich 109, 126 n 9, 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 366 n 5; 547 NW2d 314 (1996). Similarly, in his appellate brief, plaintiff refers to particular pages from his deposition, but those pages were not attached to plaintiff's response to defendant's motion for summary disposition, and have not been presented to this Court on appeal.

Plaintiff also claims that the default judgment of \$30,000 entered against the uninsured driver, Antonio Bradford, “constitutes res judicata/collateral estoppel” and “should be definitive and given conclusive effect” against defendant. Plaintiff further argues that the language of the insurance policy did not entitle defendant to dismissal after a judgment is entered against an uninsured driver, but rather the policy indicates that defendant will pay any amount due to the insured.

Plaintiff did not preserve these arguments below. He did not raise or brief these arguments before the trial court granted defendant’s motion. To the contrary, he represented to the trial court that entry of a default judgment against Bradford was immaterial to the determination of defendant’s liability. Although in his motion for reconsideration of the order granting defendant’s motion he claimed that it was “inconsistent and contradictory” to grant the default judgment and dismiss the claim against defendant, did not refer to collateral estoppel or res judicata and provided no authority to support his assertions. Moreover, plaintiff has failed to adequately address this issue on appeal. He cites no authority indicating how res judicata and collateral estoppel apply in this context.

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Under the circumstances, we decline to address these arguments further. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter