

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES R. MARTIN,

Plaintiff-Appellant,

v

INTERSTATE BRANDS CORPORATION,

Defendant-Appellee,

and

CITY OF DETROIT,

Defendant.

UNPUBLISHED

September 20, 2005

No. 247727

Wayne Circuit Court

LC No. 02-212629-NI

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant Interstate Brands Corporation's motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court held that plaintiff's claim was barred by the no-fault insurance act because the evidence did not establish that plaintiff had suffered a permanent serious disfigurement. We reverse and remand for further proceedings. We decide this case without oral argument pursuant to MCR 7.214(E).

Plaintiff claims that the trial court improperly granted summary disposition because he presented evidence establishing that he suffered a permanent serious disfigurement. We review de novo claims that the trial court improperly granted summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue on which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). If the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

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

Under the no-fault insurance act, a person is subject to tort liability for non-economic loss caused by his ownership, maintenance, or use of a motor vehicle only if the injured person suffered death, serious impairment of body function, or permanent serious disfigurement. *Stephens v Dixon*, 449 Mich 531, 539; 536 NW2d 755 (1995); MCL 500.3135(1). Whether an injured person has met this threshold is a question of law for the trial court if the trial court finds either that (1) “there is no factual dispute concerning the nature and extent of the person’s injuries,” or (2) “there is a factual dispute concerning the nature and extent of the person’s injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement.” MCL 500.3135(2)(a). Whether an injury amounts to a “permanent serious disfigurement” depends on its physical characteristics rather than its effect on a plaintiff’s ability to live a normal life. *Nelson v Myers*, 146 Mich App 444, 446; 381 NW2d 407 (1985).

In this case, plaintiff has a scar just above his right eyelid that is twenty millimeters in length, a smaller scar near his right elbow, and a smaller scar near his right kneecap. A physician testified that the appearance of the scars could be greatly improved with surgery, but also stated that no matter how well the procedure went, plaintiff would still have some “residual degree of noticeable scarring.” Accordingly, plaintiff established that his scarring was permanent. The remaining question is whether the trial court properly concluded, as a matter of law, that it was not serious.

Determining the seriousness of a scar is a matter of common knowledge and experience for the courts. *Id.* We are aware that this Court has found that a scar larger than plaintiff’s scars was not sufficiently serious to meet the threshold. See *id.* at 446-447 (three-centimeter scar not permanent serious disfigurement). However, in that case, the scar was described as being only “slightly lighter than the surrounding skin.” See *Nelson, supra* at 446 n 1. By contrast, our review of the photographic evidence in this case indicates that the scarring near plaintiff’s eye is much darker than the surrounding skin. The combination of plaintiff’s pigmentation and the location of the scar make it particularly noticeable. Further, plaintiff submitted evidence that the plastic surgery required to reduce the appearance of his scars would cost over \$10,000. We conclude that this evidence sufficed to establish a “factual dispute concerning the nature and extent of [plaintiff’s] injuries,” MCL 500.3135(2)(a), and therefore hold that the trial court erred in ruling against plaintiff on this issue as a matter of law.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs