STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM D. COLLINS and ROBERTA COLLINS, Plaintiffs-Appellants, v JULIE K. DAVIS and WALTER GENE DAVIS, Defendants-Appellees.	UNPUBLISHED October 13, 2005 No. 256055 Grand Traverse Circuit Court LC No. 03-022746-NI

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).[1] We affirm.

Plaintiff first argues that the trial court erred in concluding that he did not suffer a serious impairment of body function. We review de novo the trial court's ruling on a motion for summary disposition. *Maskery v Univ of Michigan Bd of Regents*, 468 Mich 609, 613; 664 NW2d 165 (2003). In doing so, for purposes of MCR 2.116(C)(10), we consider the documentary evidence submitted by the parties in the light most favorable to plaintiff as the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence does not establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id*.

Under Michigan's no fault act, a person will only be responsible for noneconomic damages resulting from a motor vehicle accident "if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). Whether a plaintiff has suffered a serious impairment of body function is a question of law to be decided by the trial court if there are no factual disputes about the nature and extent of the plaintiff's injuries or, if there is a dispute, it is not material to the question of whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a); *Kreiner v*

[1] Because plaintiff Roberta Collins' claim is wholly derivative of her husband's claim, when we refer to "plaintiff" in the singular, it shall pertain to William Collins.

Fischer, 471 Mich 109, 131-132; 683 NW2d 611 (2004). The statute defines "serious impairment of body function" 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).

Plaintiff argues that he suffered from neck and back pain, a closed-head injury, and depression as a result of an automobile accident with defendant Julie Davis. Assuming that plaintiff's injuries were objectively manifested, plaintiff did not show that the injuries affected his "general ability to lead [his] normal life" under the definition of that phrase as set forth by the majority of our Supreme Court in *Kreiner*. Plaintiff missed three weeks of work after the accident. Although plaintiff claims his injuries caused him to quit his job as a car salesman, plaintiff quit the job he was at when the accident occurred to take another job as a car salesman, and he worked at this job for about a year.[2] Besides the initial three weeks after the accident that he was off work, plaintiff had no medical restrictions keeping him from working. Plaintiff also indicated that he was unable to perform household activities and some recreational activities, like bow hunting, fishing, and camping, for about a year after the accident. Plaintiff also complained of a decline in intimate relations with his wife as a result of the accident. With respect to the recreational activities and sexual relations, plaintiff testified that, for the most, he did not engage in them because he had no interest, urge, or confidence following the accident; physical pain or inability appears to have been secondary, if even an issue at all. And, as with the household chores, any physical pain or discomfort associated with performing a task or activity, which may have stopped plaintiff from engaging in the task or activity, no longer prevented him, in general, from participating or acting after about the first year. Again, plaintiff did not have any medical restrictions preventing him from doing these activities, but rather he did not perform these tasks based, in part, on self-imposed restrictions predicated on pain. See *Kreiner*, *supra* at 133 n 17. However, we recognize that, consistent with this Court's recent decision in *McDanield v Hemker*, __Mich App__; __NW2d__ (Docket No. 263150, issued September 27, 2005), the existence of self-imposed restrictions based on real or perceived pain, in and of itself, does not

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[2] Plaintiff contended in his deposition that he left the first dealership because he "just wasn't comfortable, wasn't selling cars and just had to get away." Regarding his subsequent employment at another dealership, plaintiff explained that his problems continued, that test drives made him extremely nervous and paranoid, that he had difficulty concentrating and had short-term memory problems, which have now resolved themselves, and that he lacked confidence. He chose to work at the second dealership because it was less stressful and not as demanding a job when compared to the previous dealership. The income received from these jobs was fairly comparable, and, despite plaintiff's complaints about being paranoid and lacking confidence, he made approximately $40,000 in a little under a year while at the second dealership. Plaintiff then took a job with AFLAC Insurance and has no plans to retire. Indeed, plaintiff stated, "I work a full week today, and I enjoy what I'm doing. I see no reason to really slow down." Under this set of facts, which show plaintiff happily employed, and which entail subjective claims regarding confidence, fears, and other mental impressions to a significant degree, we cannot conclude that the impact of the injuries on plaintiff's employment were of such a nature or rose to such a level as mandating reversal, even when considered with the other areas of plaintiff's life affected by the accident.

mandate a finding that there is no serious impairment of body function. The *McDanield* panel stated:

> [I]t is important to take notice of the fact that footnote 17 [in *Kreiner*] is not a general proposition enunciated by our Supreme Court, but rather it is tied directly to one factor, factor d [the extent of the residual impairment], and the Court emphasized that the enumerated factors are "not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves." *Kreiner, supra* at 133-134. Accordingly, simply because there may be self-imposed restrictions based on pain does not mean that a plaintiff has not established a threshold injury. A trial court must look to all of the evidence presented, consider, if relevant, all of the *Kreiner* factors, and view "the totality of the circumstances" in determining whether an impairment has affected "the person's general ability to lead his or her normal life" as required by MCL 500.3135(7). *Kreiner, supra* at 132-134. [*McDanield, supra,* slip op at 9.]

Nonetheless, aside from the self-imposed restrictions relative to the extent of any residual impairment, when viewing the totality of the circumstances presented here, we simply cannot conclude that the claimed impairment has affected plaintiff's general ability to lead his normal life. "Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment if, despite those impingements, the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's 'general ability' to lead his normal life has not been affected and he does not meet the 'serious impairment of body function' threshold." *Kreiner, supra* at 131. Plaintiff has submitted insufficient documentary evidence showing that the course or trajectory of his normal life was affected by his injuries. Compare *McDanield, supra.* Thus, we conclude that, viewing the evidence in a light most favorable to plaintiff, *Maiden*, *supra* at 120, plaintiff has not established a genuine issue of material fact as to whether he suffered a serious impairment of body function.[3]

Next, plaintiff argues that the trial court erred in determining that he did not suffer a permanent serious disfigurement. We disagree. "Whether an injury amounts to a permanent serious disfigurement depends on its physical characteristics." *Kanaziz v Rounds*, 153 Mich App 180, 185-186; 395 NW2d 278 (1986). A scar that is "hardly discernible" will not be a permanent serious disfigurement. *Petaja v Guck*, 178 Mich App 577, 579-580; 444 NW2d 209 (1989). We have reviewed photographs of plaintiff's scar. The scar is small, testimony indicated about four centimeters, and near the top of plaintiff's forehead. It is slightly darker than the surrounding skin, and there is a slight indentation in the skin. However, the scar is not a serious disfigurement. See e.g., *Kanaziz, supra* at 186-187 (one-inch long, jagged, star-shaped scar on a right eyelid not a serious disfigurement); *Nelson v Myers*, 146 Mich App 444, 446; 381 NW2d 407 (1985)(three centimeter scar under eye not a serious disfigurement).

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[3] In light of this analysis, we need not reach plaintiff's argument regarding whether aggravation of a preexisting injury may constitute an objectively manifested injury.

Plaintiff also argues that the trial court erred in not finding that plaintiff suffered from a serious neurological injury under MCL 500.3135(2)(a)(ii) based on an affidavit from Dr. Turner. We disagree. Plaintiff did not submit this affidavit until he filed his motion for reconsideration. Because it is apparent that there was no reason such an affidavit could not have been timely submitted to the trial court in response to defendant's motion for summary disposition, the trial court did not err in declining to reconsider its grant of summary disposition based on that affidavit. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000)(no abuse of discretion in denying motion for reconsideration that rests on testimony that could have been presented in a timely fashion).

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ William B. Murphy