

STATE OF MICHIGAN
COURT OF APPEALS

ZIAD BIAZZI,

Plaintiff-Appellee,

v

IBTISSAM TAHSIN BAZZI,

Defendant,

and

KATHRYN LYNN HUNTSMAN and MARK
ALAN HUNTSMAN,

Defendants-Appellants.

UNPUBLISHED

April 4, 2006

No. 264016

Wayne Circuit Court

LC No. 04-427550-NI

BILAL BAZZI,

Plaintiff-Appellee,

v

IBTISSAM TAHSIN BAZZI,

Defendant,

and

KATHRYN LYNN HUNTSMAN and MARK
ALAN HUNTSMAN,

Defendants-Appellants.

No. 264017

Wayne Circuit Court

LC No. 04-427551-NI

Before: Owens, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

In this consolidated appeal, defendants Kathryn and Mark Huntsman appeal by leave granted the circuit court's orders denying their summary disposition motions. Because plaintiffs failed to establish that their injuries affected their general ability to lead their normal lives, we reverse and remand for entry of orders granting defendants summary disposition.

These cases arise out of an auto accident. Plaintiffs were passengers of a vehicle driven by their mother, defendant Ibteham Bazzi, which collided with a vehicle driven by Kathryn Huntsman and owned by Mark Huntsman. Plaintiffs filed separate auto negligence suits against defendants. Ziad Bazzi alleged that as a result of defendants' negligence, he sustained a serious impairment of body function. Bilal Bazzi alleged both a serious impairment of body function and a serious permanent disfigurement under MCL 500.3135(1). Defendants moved for summary disposition. The trial court denied the motions on the serious impairment of body function grounds concluding there were genuine issues of material fact whether plaintiffs' injuries affected their general ability to lead normal lives. It did not reach the permanent serious disfigurement issue.

We review a trial court's denial of summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When reviewing a motion for summary disposition, we consider the submitted admissible evidence in a light most favorable to the nonmoving party. *Id.* Review is limited to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

Under the no-fault act, a person is subject to tort liability for noneconomic loss caused by the ownership, maintenance, or use of a motor vehicle only when an injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1). 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). Whether a person has suffered a serious impairment of body function is a question of law when there is no factual dispute regarding the nature and extent of the injuries, or when the factual dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a). Otherwise, whether the plaintiff suffered a serious impairment of body function is a question of fact for the jury. See *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004).

In determining whether a plaintiff has suffered a serious impairment of body function, the trial court must consider: (1) whether an important body function has been impaired; (2) whether the impairment is objectively manifested; and (3) whether the impairment affects the plaintiff's general ability to lead a normal life. *Kreiner, supra*. A plaintiff does not satisfy the first prong of the serious impairment test if an unimportant body function is impaired or if an important body function has been injured but not impaired. *Id.* Further, "for 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, 653; 654 NW2d 604 (2002), quoting with express approval SJI2d 36.11. For purposes of this appeal, defendants concede that plaintiffs

have each suffered an objectively manifested impairment of an important body function. Hence, the only issue is whether plaintiffs' injuries affected their general ability to lead normal lives.

Whether a person is generally able to lead his or her normal life depends on whether the objectively manifested impairment has affected the overall course of the person's life. *Kreiner, supra* at 130-131. A court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment, looking at the plaintiff's life both pre- and post-accident. *Id.* at 131, 133. In addition, it may consider the nature and extent of impairment, the type and length of required treatment, the impairment's duration, the extent of any residual impairment, and the prognosis for recovery. *Id.* at 133. However, self-imposed restrictions do not establish that an injury has affected a person's ability to lead a normal life. *Id.* at 133 n 17. "A negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Id.* at 137.

DOCKET NO. 264016

Plaintiff Ziad Bazzi fractured his right shoulder in the auto accident. While he missed two and one-half months of work, he was able to return to work in March 2004 without restrictions, and he used his right arm for self-care activities as early as two months after the accident. Despite his claim that he continued to be limited by his shoulder injury, his medical records reflected that the fracture healed well and, as of February 2005, his range of motion was "full." Although Ziad stated he was no longer able to participate in lifting weights, throwing things, jet skiing, soccer, painting, and swimming, he was not restricted from these activities by a physician; rather, these restrictions were self-imposed. Self-imposed restrictions, based on real or perceived pain, are insufficient to establish an impairment. *Kreiner, supra* at 133 n 17. Therefore, even when viewed in a light most favorable to Ziad, the evidence does not raise a material fact whether his injuries affected his general ability to lead a normal life.

DOCKET NO. 264017

Plaintiff Bilal Bazzi suffered a dislocated right shoulder with a Hill Sachs fracture, as well as a minimal T6 compression fracture. Bilal stated that, as a result of his injuries, his right shoulder caused him pain, numbness, and tingling, and he had trouble sleeping because he could no longer sleep on his right side. However, Bilal was able to return to work as a medical resident a few days after the accident, albeit wearing a sling and a Jewett brace. Moreover, he admitted that his doctors recommended physical therapy, but he did not regularly attend because he was too busy with his medical residency and could perform the physical therapy by himself at home.

Bilal also claimed his injuries affected his ability to do his job because he could not "hold" patients like he used to without the risk of dislocating his shoulder again, he had to rest often, and he took more time to walk from hospital to hospital as a result of his back pain. Nevertheless, holding or lifting patients was just one aspect of Bilal's job as a medical resident, and there was no evidence that this alleged limitation caused him to miss work or be disciplined. Therefore, it did not affect his general ability to do his job or the overall course of his medical career. Finally, while Bilal stated that like his brother he was no longer able to participate in soccer, basketball, fishing, and swimming, these restrictions were also self-imposed. Hence,

there was no genuine issue of material fact whether his injuries affected his general ability to lead a normal life.

Defendants also argue Bilal failed to show that the scar on his nose is a permanent serious disfigurement caused by the auto accident. We agree.

While we note that the trial court did not reach this issue, we may still consider it because it was raised at the trial level, it can be decided as a matter of law,¹ and the facts necessary for its resolution were presented. *Village of Hickory Pointe Homeowners Ass'n v Smyk*, 262 Mich App 512, 516; 686 NW2d 506 (2004). Bilal asserts that because the scar is on his face, it is a serious permanent disfigurement. He relies on *Earls v Herrick*, 107 Mich App 657, 668; 309 NW2d 694 (1981), in which this Court stated, "Almost any facial scar which is immediately noticeable might result in serious emotional effects for the individual who must bear the scar. Such a permanent facial scar might be found to be a serious disfigurement by a jury." However, the seriousness of a scar is a matter of common knowledge and experience, and a plaintiff's subjective embarrassment and sensitivity to the scarring must be viewed objectively by the trial court. *Nelson v Meyers*, 146 Mich App 444, 446 n 2; 381 NW2d 407 (1985).

Additionally, a "hardly discernable scar" below the lip is not the type of injury for which the Legislature intended to allow recovery when it established the threshold of permanent serious disfigurement. *Petaja v Guck*, 178 Mich App 577, 579-580; 444 NW2d 209 (1989). Nor is a one-inch scar on an eyelid or a three-centimeter scar under the eye. *Kanaziz v Rounds*, 153 Mich App 180, 186-187; 395 NW2d 278 (1986); *Nelson, supra* at 446 n 1. Here, Bilal admitted that while the scar on his nose was initially "pretty obvious," it could only be seen "a little bit" at the time of the hearing. Moreover, he admitted that tanning helped the scar and that it was not as noticeable as the childhood scar above his right eyebrow. Further, the photographs submitted by defendants, which we admit are not very clear, did not demonstrate that the scar on his nose was readily noticeable. Because the scar was not readily noticeable, it was not a permanent serious disfigurement for purposes of meeting the no-fault threshold, and the trial court should have granted summary disposition on this issue.

Reversed and remanded for entry of orders granting defendants summary disposition. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

¹ Because there does not appear to be a dispute regarding the nature and extent of the injury, this issue can be decided as a matter of law. MCL 500.3135(2)(a)(ii).