

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH SPIES,

Plaintiff-Appellant,

v

ALLYN PARKER and JASON PARKER,

Defendants-Appellees.

UNPUBLISHED

June 25, 2002

No. 227581

Arenac Circuit Court

LC No. 99-006234-NI

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

PER CURIAM.

Plaintiff appeals as of right a jury verdict of no cause of action in this automobile negligence case. We affirm.

Plaintiff sought noneconomic damages for injuries he sustained in a single-vehicle accident. At the close of plaintiff's case, defendants moved for a directed verdict. The trial court denied the motion because it found a factual dispute existed regarding whether plaintiff suffered serious impairment of body function or permanent serious disfigurement. The jury found that defendant's negligence proximately caused plaintiff's injury, but that plaintiff's injuries did not meet this no-fault threshold for recovery.

Plaintiff asserts that the trial court erred in failing to decide the threshold issue as a matter of law. A tortfeasor is subject to liability for noneconomic damages caused by an automobile accident if the injured party suffers "death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). Because plaintiff filed his claim in 1999, the 1995 amendments to the no-fault insurance act, MCL 500.3101 *et seq.*, apply. MCL 500.3135(2). Under those amendments, whether a person has suffered serious impairment of body function or permanent serious disfigurement is a question of law for the trial court if no factual dispute exists concerning the nature and extent of the person's injuries or, if there is a dispute, if it is immaterial to the determination whether plaintiff suffered serious impairment of body function or permanent serious disfigurement. MCL 500.3135(2)(a); *May v Sommerfield*, 239 Mich App 197, 201; 607 NW2d 422 (1999).

We agree with plaintiff that the trial court erred by failing to determine whether a factual dispute existed regarding the nature and extent of plaintiff's injuries and submitting the threshold issue to the jury. In doing so, the court appears to have relied on *DiFranco v Pickard*, 427 Mich

32; 398 NW2d 896 (1986), which the 1995 amendments to the no-fault act overturned. See *Kern v Blethen-Coluni*, 240 Mich App 333, 338; 612 NW2d 838 (2000).

However, no remand is necessary. Our review of the record found no material conflict between plaintiff's testimony, his doctors' testimony, and the testimony of a doctor who provided an independent medical examination. Plaintiff and the doctors testified that plaintiff suffered a comminuted fracture of his left ulna, which required two surgeries to correct, and lacerations to his lower lip. The witnesses agreed that as a result, plaintiff's range of motion in his left arm is limited, he suffers sensitivity to touch and occasional pain in his arm, and he has a six- or seven-inch scar on his forearm. Plaintiff testified that he has resumed nearly all his pre-injury activities, although he cannot participate fully in certain sports, and the doctors agreed that no restrictions were necessary on plaintiff's activities. As a result, we need not remand this case to the trial court for a determination whether a material factual dispute existed concerning the nature and extent of plaintiff's injuries. *Id.* at 343-344.

Whether those injuries constituted either serious impairment of body function or permanent serious disfigurement under the statute presents a question of law. *Id.* at 341. "Serious impairment of body function" is defined 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). An important body function is one that affects a person's general ability to live a normal life, which we determine by comparing plaintiff's pre- and post-injury activities. *Kern, supra* at 340; *Miller v Purcell*, 246 Mich App 244, 249-250; 631 NW2d 760 (2001).

Plaintiff suffered an objectively manifested impairment of an important body function, namely use of his arm.¹ See *Kroft v Kines*, 154 Mich App 448, 452; 397 NW2d 822, vacated on other grounds 428 Mich 879 (1987). Plaintiff underwent two surgeries to repair the broken ulna and wore casts on his arm for several weeks. Plaintiff's doctor prohibited him from working immediately after the accident, and plaintiff missed several weeks of school while taking narcotic pain medications. Additionally, plaintiff's range of motion is limited, and he suffers occasional pain and sensitivity to touch in his arm.

Although plaintiff's injury impaired the use of his arm, the statute further requires that the impairment was "serious," meaning that it affected plaintiff's "general ability to lead his . . . normal life." MCL 500.3135(7). While plaintiff underwent two surgeries to repair his fractured arm, the injury prevented him from performing activities of his daily life for only a few weeks. Plaintiff suffers little residual impairment, specifically a seven- to fifteen-degree loss of pronation in his left arm. Further, he was provided a positive prognosis. We conclude that plaintiff's injuries did not affect his general ability to live his normal life and, consequently, he did not suffer serious impairment of body function.

¹ Plaintiff does not argue and did not provide evidence that the injury to his mouth impaired any important body function.

Plaintiff also did not suffer permanent serious disfigurement. Whether an injury amounts to a permanent serious disfigurement depends on its physical characteristics rather than its effect on the plaintiff's ability to live a normal life. *Kosack v Moore*, 144 Mich App 485, 491; 375 NW2d 742 (1985). Plaintiff has a seven-inch scar on his non-dominant arm that he noted could be covered by long sleeves, and a small scar on the inside of his lower lip, unnoticeable in everyday encounters. We do not doubt that these scars are permanent, but they do not constitute serious disfigurements for purposes of the statute.

In light of these conclusions, we need not address plaintiff's remaining claims. We affirm.

/s/ Richard A. Bandstra

I concur in result only.

/s/ E. Thomas Fitzgerald