

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL L. BEUTNER,

Plaintiff-Appellant,

v

ALBERT JOHN KAY, SR.,

Defendant-Appellee.

UNPUBLISHED
September 22, 1995

No. 175097
LC No. 93-315781 NI

Before: White, P.J., and Hoekstra and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's dismissal of his suit for recovery of non-economic damages under the no-fault act, MCL 500.3135; MSA 24.13135. We affirm.

Plaintiff's complaint, filed on June 3, 1993, alleged that on May 12, 1993, defendant ran a red light and struck plaintiff's automobile, causing plaintiff injuries which included "facial cuts which have resulted in visible scars, closed head injuries, multiple contusions and abrasions, pain, loss of work, reduction of his ability to function . . . an impairment of bodily function and serious permanent disfigurement."

Following plaintiff's deposition, defendant moved for summary disposition under MCR 2.116(C)(10), arguing that reasonable minds could not differ as to whether plaintiff had sustained serious impairment of a body function or permanent serious disfigurement under MCL 500.3135. That statute permits a person injured in a motor vehicle accident to recover damages for noneconomic loss from a negligent owner or operator of a motor vehicle only if the person suffered death, serious impairment of body function, or permanent serious disfigurement. DiFranco v Pickard, 427 Mich 32, 37; 398 NW2d 896 (1986). The serious impairment of body function threshold contains two inquiries: 1) what body function, if any, was impaired because of injuries sustained in a motor vehicle accident, and 2) was the impairment of the body function serious. Id. at 67. Medical testimony is generally required to establish the existence, extent, and permanency of the impairment of body function, although subjective complaints and symptoms may suffice. Id. at 75. The question whether a plaintiff suffered a serious impairment of body function must be submitted to the trier of fact whenever the evidence would cause reasonable minds to differ as to the answer. Id. at 69.

Viewed in a light most favorable to plaintiff, the facts are that plaintiff was taken to Oakwood Hospital's emergency room immediately following the accident on May 12, 1993. Under "triage assessment" the emergency treatment records state "small laceration above R eye, small area of edema over L eyebrow, small laceration bridge of nose." Under "Procedures" the records indicate "contusion to forehead," and "contusion to right upper eyelid." X-rays taken of plaintiff's skull and cervical spine were negative and found no fracture or dislocation. The records indicate plaintiff was discharged home and no medication was prescribed.

*Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff testified at deposition¹ that he had not received medical treatment subsequent to the date of the accident because he had to go through the VA and, although he had contacted the VA for an appointment, he had not been notified of a date.² Plaintiff further testified he could not afford medical treatment, as his health insurance coverage through work had lapsed at the time of the accident because his employer had not made payment. The scant excerpts before us of plaintiff's deposition indicate plaintiff testified he was experiencing pain in both knees and had headaches "once in a while." When asked if he had noticed any changes in his personality since the accident, plaintiff testified that his wife sometimes said he flew off the handle too much. When asked if there were any activities he could not do or was hesitant to do because of his injuries, plaintiff responded "not really." Plaintiff has presented no testimony or other evidence of scarring or permanent disfigurement.

The circuit court granted defendant's motion, and applying DiFranco, noted at the motion hearing that plaintiff never received treatment for his alleged medical problems, nor had plaintiff put forth any testimony that the problems limited him in any way. The court did note that plaintiff missed six days of work following the accident.³ The court further noted that as to plaintiff's alleged scar, the medical records indicated the laceration to the eyelid was superficial and plaintiff had testified at deposition there was no stitching. The court concluded reasonable minds could not differ as to the existence of serious impairment or permanent serious disfigurement.

We agree with the circuit court that reasonable minds could not conclude plaintiff suffered either serious impairment of a body function or permanent serious disfigurement under MCL 500.3135. Plaintiff failed to provide any evidence of an impairment of a body function or any serious disfigurement. While we agree with plaintiff that his failure to obtain medical treatment is not dispositive, plaintiff has never elaborated on his injuries beyond the testimony that he had "pain" in both knees and headaches "once in awhile." His claim of closed head injury is supported only by his testimony that his wife sometimes said he flew off the handle too much. Most important, plaintiff testified that his activities were "not really" affected by his injuries. Under these circumstances, the trial court did not err by ruling defendant was entitled to summary disposition as a matter of law. Id. at 58.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Meyer Warshawsky

¹ Neither party indicates the date of plaintiff's deposition. Further, the complete deposition is not in the lower court file and the parties have provided only excerpts.

² Plaintiff does not argue on appeal he was ever seen at the VA or treated elsewhere. Plaintiff's interrogatory answers attached by defendant to his motion for summary disposition indicate plaintiff had an eye exam and got new glasses, but identifies only Oakwood Hospital and May 12, 1993, as dates of treatment.

³ Plaintiff submitted an affidavit below, on the eve of oral argument, attesting that he had missed six days of work, and not one day, as defendant argued.