

STATE OF MICHIGAN
COURT OF APPEALS

TROY ANTHONY DYBAS,
Plaintiff-Appellee,

UNPUBLISHED
April 7, 2011

v

RITA MARIE MADZIAR,
Defendant-Appellant.

No. 295512
Bay Circuit Court
LC No. 08-003575-NI

Before: FITZGERALD, P.J., and O'CONNELL and METER, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority opinion that the trial court erred when it denied defendant's motion for a directed verdict on the issue of permanent serious disfigurement. I write separately to state that the trial court also erred when it refused to allow into evidence defendant's video and photographs of plaintiff doing everyday household chores. The trial court also compounded the prior two errors by allowing into evidence hearsay statements relating to plaintiff's injuries and the restrictions imposed upon plaintiff by his doctor. These hearsay statements were inconsistent with Dr. Stewart's testimony that he could not recall placing restrictions upon plaintiff, and that he would expect plaintiff to be able to return to normal function.

The combination of these three errors results in manifest injustice. I would reverse and remand this case for a new trial limited to two issues: did plaintiff's injury result in serious impairment of body function, and, if so, what amount of non-economic damages, if any, did plaintiff sustain as a result of that impairment. On retrial, the trial court shall admit into evidence the video and pictures of plaintiff performing everyday household chores and shall not let into evidence plaintiff's hearsay statements concerning the restrictions imposed upon him by his doctor, unless said restrictions are confirmed by plaintiff's medical records or his doctor's testimony.

I would reverse and remand.

/s/ Peter D. O'Connell