

STATE OF MICHIGAN
COURT OF APPEALS

CATHY GOODWIN,

Plaintiff,

and

DAWN STURDEVANT, Individually and as Next
Friend of TARA PETTY and TIFFANY PETTY,

Plaintiff-Appellant,

v

NATHAN MACKELLAR,

Defendant/Cross Plaintiff-Appellee,

and

DEPARTMENT OF TRANSPORTATION and
STATE OF MICHIGAN,

Defendants/Cross Defendants-
Appellees.

UNPUBLISHED

January 25, 2005

No. 250280

Van Buren Circuit Court

LC No. 01-048788-NI

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Plaintiff-appellant appeals as of right from the trial court's orders granting summary disposition to defendants and dismissing her claims that were predicated on her having suffered serious disfigurement. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff-appellant suffered injuries from a traffic collision with a vehicle owned by the state and driven by its employee. She recovered, but was left with a scar above her right eye. The sole issue on appeal is whether the trial court erred in concluding that the scar did not constitute serious disfigurement for purposes of the no-fault insurance act, MCL 500.3101 *et seq.*

MCL 500.3135(1) provides that a person “remains subject to tort liability for noneconomic loss caused by his or her ownership maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.” Subsection (2) establishes that whether a person has suffered permanent serious disfigurement is a question of law for the court, where there is no factual dispute concerning the nature and extent of the injuries, or where no such factual dispute is material to the question whether the person has suffered permanent serious disfigurement.¹

The trial court viewed plaintiff-appellant in making its determination. Plaintiff-appellant does not challenge the trial court’s description of her scar as “easily noticeable because of its size (1.25 inches) or its location (near the eyebrow).” Although the trial court did not explicitly rule on the permanence of that disfigurement, because the matter was not seriously disputed and because scars are commonly known to be permanent in nature (but perhaps for some fading over the years), we regard the trial court as having impliedly acknowledged the permanent nature of the scar.

A trial court’s factual findings are reviewed for clear error, while its application of the law to the facts is reviewed de novo. *Schroeder v Detroit*, 221 Mich App 364, 366; 561 NW2d 497 (1997).

In *Petaja v Guck*, 178 Mich App 577, 579-580; 444 NW2d 209 (1989), this Court held that what the trial court regarded as “a small, hardly discernible tissue scar immediately below [the] plaintiff’s lip” did not constitute permanent serious disfigurement. In *Kanaziz v Rounds*, 153 Mich App 180, 186-187; 395 NW2d 278 (1986), this Court held that a scar described by the plaintiff’s surgeon as a “right eyelid wound . . . just over one inch in length and ‘jagged’ or ‘star shaped’” and “permanent,” and which the plaintiff admitted was not “immediately and readily noticeable,” did not meet the threshold. In *Nelson v Myers*, 146 Mich App 444, 446 n 1; 381 NW2d 407 (1985), this Court held that a scar under the plaintiff’s left eye, “approximately three centimeters long, . . . slightly depressed and slightly lighter than the surrounding skin,” likewise did not bring liability under the no-fault act. These cases predate revisions to the no-fault act such that the question was one for the jury unless no reasonable person could disagree. In contrast, the instant case is governed by MCL 500.3135(2) as amended, making the question one for the court, in most situations.

Plaintiff-appellant discusses these cases, but cites no case where a scar was found to satisfy the requirements of MCL 500.3135(1), let alone argue that her scar is equal to or worse than any such.

“To the extent possible, each provision of a statute should be given effect, and each should be read to harmonize with all others.” *Michigan Basic Property Ins Ass’n v Ware*, 230

¹ Also bearing on this case is MCL 691.1405, which provides that “[g]overnmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner”

Mich App 44, 49; 583 NW2d 240 (1998). Any noticeable scar on the face, of any significance, is a permanent disfigurement. But the statute applies only to “permanent *serious* disfigurement.” MCL 500.3135(1) (emphasis added). The operative word, then, is “serious.”

Plaintiff-appellant’s scar seems to be similar to those at issue in *Kanaziz* and *Nelson, supra*. Given that the latter were not “serious,” as pure matters of law, for purposes of the no-fault act, the trial court in this case did not clearly err in regarding plaintiff-appellant’s scar as not serious enough to trigger tort liability under MCL 500.3135(1) and (2), as a serious disfigurement. Because a scar that is invisible cannot constitute a disfigurement, one that is plainly visible does not necessarily constitute a serious disfigurement. The trial court in this case properly gave the statutory word “serious” the weight it demanded. Plaintiff-appellant’s scar is a permanent disfigurement, but not a serious one for purposes of the no-fault act.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello