

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SHERAILLE LATRICE HINSON,

Plaintiff-Appellant,

v

TGI FRIDAY'S, INC., d/b/a/ TGI FRIDAY'S,

Defendant-Appellee,

and

MELVIN WOODS,

Defendant.

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UNPUBLISHED  
September 21, 2010

No. 291768  
Wayne Circuit Court  
LC No. 07-715274-NF

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Plaintiff Sheraille Hinson appeals as of right the trial court's order granting defendant TGI Friday's, Inc. summary disposition under MCR 2.116(C)(10). This case arises out of a motor vehicle accident, in which Hinson was injured. We reverse and remand.

**I. BASIC FACTS**

On March 12, 2006, Hinson was the front seat passenger of a vehicle driven by Melvin Woods.<sup>1</sup> Woods, who was 20 years old at the time, was drunk driving. Woods testified that he drank several Long Island Ice Tea alcoholic drinks while a customer at a TGI Friday's restaurant. Woods lost control of his vehicle, which then sideswiped another vehicle and hit a tree. A hospital toxicology analysis performed immediately after the accident confirmed that Woods had a blood alcohol level of 0.175 grams per 100 milliliters.

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<sup>1</sup> Defendant Melvin Woods was defaulted for failure to plead or otherwise defend. He is not a party to this appeal.

Hinson filed suit, alleging a dramshop act<sup>2</sup> claim against TGI Friday's for serving Woods alcoholic beverages. Hinson alleged that she suffered multiple injuries as a result of the accident, including a right hip fracture, left leg fracture with intermedullary rodding, L5 disc fragmentation, left knee osteoarthritis, closed-head injury, and left ankle ligament disruption.

TGI Friday's moved for summary disposition, but it did not refute liability under the dramshop act. Rather, TGI Friday's asserted that, as a defendant in a dramshop action, it was entitled to assert those defenses available to the allegedly intoxicated person.<sup>3</sup> Therefore, TGI Friday's argued that Hinson's cause of action failed because she had not alleged a serious impairment of an important body function. More specifically, TGI Friday's argued that it was entitled to summary disposition on Hinson's claim for an alleged closed-head injury because she failed to meet the statutory requirement of presenting evidence from "a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries" that she may have "a serious neurological injury."<sup>4</sup> TGI Friday's further pointed out that Hinson had no complaints of head injury when the accident occurred and that a March 2006 CT scan revealed no abnormality. TGI Friday's suggested that Hinson's symptoms were actually related to her long history of marijuana use.

With respect to Hinson's alleged back injury, TGI Friday's argued that Hinson had no complaints of back injury when the accident occurred and that a March 2006 CT scan showed that her spine was in "good alignment." TGI Friday's admitted that an August 2006 MRI revealed some degeneration of the L5 vertebrae, but contended that there was no evidence of herniation or defragmentation, as Hinson claimed. And TGI Friday's argued that the degeneration was not causally related to the accident. Although admitting that a November 2006 report showed degeneration in Hinson's knee, TGI Friday's similarly argued that Hinson's complaint of knee injury was not causally related to the accident, noting that she made no such complaint when the accident occurred. Likewise, although admitting that a June 2007 x-ray revealed a healed fracture, TGI Friday's argued that Hinson's complaint of ankle pain, which did not arise until October 2006, was not causally related to the accident.

TGI Friday's did not dispute that Hinson suffered a fracture of her left femur that required rodding and a crack in her right hip as a result of the accident. However, TGI Friday's argued that, even accepting these and Hinson's other claimed injuries, it was nonetheless entitled to summary disposition because there was no showing that her injuries had affected her general ability to lead her normal life. Using the test set forth in *Kreiner v Fischer*,<sup>5</sup> TGI Friday's argued that none of Hinson's injuries were "life-altering"; notably, she recovered quickly from her

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<sup>2</sup> MCL 436.1801.

<sup>3</sup> See MCL 436.1801(7).

<sup>4</sup> MCL 500.3135(2)(a)(ii).

<sup>5</sup> *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), overruled by *McCormick v Carrier*, \_\_\_ Mich \_\_\_ (Docket No. 136738, decided July 31, 2010).

femur surgery and her hip injury healed on its own. TGI Friday's pointed out that during Hinson's post-femur-surgery visits, from May 2006 to June 2006, she reported no pain; indeed, at the June 2006 visit, she was described as walking "well" and having full weight-bearing status.

In response, Hinson submitted the affidavit of Dr. Wasim Rathur to support that her claims of injuries to her back, knee, ankle, and head were all related to the accident. Hinson argued that the trial court should deny TGI Friday's motion because the parties' positions and the evidence demonstrated that there were factual disputes regarding the nature and extent of her injuries. With respect to her closed-head injury, Hinson argued that the evidence showed that she had a suspected head injury at the time of the accident, which Dr. Rathur then confirmed in June 2006. She further pointed out that the evidence showed that in June 2006, she complained to Dr. Rathur of back pain, left leg pain, and ankle pain. And, in addition to her femur and hip injuries, Dr. Rathur diagnosed her with "acute lumbosacral strain with myofasciitis, left knee strain with effusion, left ankle strain with effusion and gait disturbance." Hinson also pointed out that, contrary to TGI Friday's contention, the August 2006 MRI did reveal "evidence of some fragmentation of the [L5] disc[.]" Moreover, in September 2008, after continually complaining of pain in her ankle for over two years, she finally had surgery to stabilize her ankle. Hinson argued that she suffered through years of pain and two surgeries. She claimed that she was no longer able to perform her normal pre-accident activities, such as physical labor, dancing, and playing with her daughter. Hinson argued that she had met her burden to show that she suffered an objectively manifested impairment of important body functions that affected her general ability to lead her normal life. In her affidavit, Hinson also contended that she suffered permanent serious disfigurement in the form of post-operative scarring on her leg.

TGI Friday's submitted a reply brief, questioning the accuracy of Dr. Rathur's affidavit and noting that his June 2006 examination and diagnosis contradicted Hinson's post-operative reports from the same time period. TGI Friday's pointed out that its doctors, who performed independent medical examinations on Hinson, questioned the causal relationship between her ankle injury and the accident. Specifically, Dr. William Higginbotham questioned whether there may have been an intervening injury to her ankle. Indeed, he stated, "It does not seem to make very much sense that the patient would have a severe injury of this type, which would escape treatment and detection until a point seven months after the automobile accident." TGI Friday's also denied that Hinson's scarring constituted a permanent *serious* disfigurement.

After hearing oral arguments on the motion, the trial court questioned why there was no mention of an ankle injury during Hinson's original post-operative care. The trial court also found it significant that, while Dr. Rathur's affidavit stated that Hinson suffered a closed-head injury, it did not state that she suffered "a serious neurological injury." Looking to the effect on Hinson's lifestyle, the trial court noted that "it appears her life was inconvenienced and somewhat changed"; however, the trial court found itself "hard pressed" to find that the trajectory of Hinson's life had changed.<sup>6</sup> The trial court also indicated that "[t]here is not enough

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<sup>6</sup> See *Kreiner*, 471 Mich at 131.

to go any where [sic] with the . . . serious disfigurement in this case.” The trial court indicated that it would render a decision the following week. The trial court then entered an order granting TGI Friday’s motion for summary disposition “for the reasons stated by the Court on the record.”

Hinson now appeals.

## II. SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

Under MCR 2.116(C)(10), a party may move for dismissal of a claim on the ground that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law. It is not sufficient for the parties to promise to offer factual support for their claims at trial.<sup>7</sup> The moving party must specifically identify the undisputed factual issues and support his or her position with documentary evidence.<sup>8</sup> The nonmoving party then has the burden to produce admissible evidence to establish disputed facts.<sup>9</sup> The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.<sup>10</sup> “[T]he court is not permitted to assess credibility, or to determine facts on a motion for summary judgment.”<sup>11</sup> We review de novo the trial court’s ruling on a motion for summary disposition.<sup>12</sup>

### B. SERIOUS IMPAIRMENT OF BODY FUNCTION

Hinson argues that the trial court erred in granting TGI Friday’s motion for summary disposition on her claim of serious impairment of body function because there were genuine issues of material fact for trial.

#### 1. LEGAL STANDARDS

Under the Michigan no-fault insurance act,<sup>13</sup> a plaintiff may recover for noneconomic damages if she has suffered “serious impairment of body function[.]”<sup>14</sup> The no-fault insurance

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<sup>7</sup> *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999); *PT Today, Inc v Comm’r of the Office of Fin & Ins Servs*, 270 Mich App 110, 150; 715 NW2d 398 (2006).

<sup>8</sup> MCR 2.116(G)(3)(b) and (4); *Maiden*, 461 Mich at 120.

<sup>9</sup> *Wheeler v Charter Twp of Shelby*, 265 Mich App 657, 663; 697 NW2d 180 (2005).

<sup>10</sup> MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

<sup>11</sup> *Oade v Jackson Nat’l Life Ins Co*, 465 Mich 244, 265; 632 NW2d 126 (2001), quoting *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

<sup>12</sup> *Roberts v Titan Ins Co*, 282 Mich App 339, 348; 764 NW2d 304 (2009).

<sup>13</sup> MCL 500.3101 *et seq.*

act defines “serious impairment of body function” as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.”<sup>15</sup>

In interpreting the Legislature’s definition of “serious impairment of body function,” the Michigan Supreme Court recently overruled the test set previously forth in *Kreiner v Fischer*. Now, pursuant to *McCormick v Carrier*,<sup>16</sup> a court should first determine “whether there is a factual dispute regarding the nature and the extent of the person’s injuries, and, if so, whether the dispute is material to determining whether the serious impairment of body function threshold is met.” “If there is no factual dispute, or no material factual dispute, then whether the threshold is met is a question of law for the court.”<sup>17</sup>

If the court may decide the issue as a matter of law, it should next determine whether the serious impairment threshold has been crossed. The unambiguous language of MCL 500.3135(7) provides three prongs that are necessary to establish a “serious impairment of body function”: (1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions) (2) of an important body function (a body function of value, significance, or consequence to the injured person) that (3) affects the person’s general ability to lead his or her normal life (influences some of the plaintiff’s capacity to live in his or her normal manner of living).<sup>[18]</sup>

The *McCormick* Court summarized its analysis of the serious impairment of body function requirement as follows:

The serious impairment analysis is inherently fact- and circumstance-specific and must be conducted on a case-by-case basis. As stated in the *Kreiner* dissent, “[t]he Legislature recognized that what is important to one is not important to all[;] a brief impairment may be devastating whereas a near permanent impairment may have little effect.” *Kreiner*, 471 Mich at 145 (CAVANAGH, J., dissenting). As such, the analysis does not “lend itself to any bright-line rule or imposition of [a] nonexhaustive list of factors,” particularly where there is no basis in the statute for such factors. *Id.* Accordingly, because “[t]he Legislature avoided drawing lines in the sand . . . so must we.” *Id.*<sup>[19]</sup>

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<sup>14</sup> MCL 500.3151(1).

<sup>15</sup> MCL 500.3135(7).

<sup>16</sup> *McCormick v Carrier*, \_\_\_ Mich \_\_\_ (Docket No. 136738, decided July 31, 2010), slip op at 34, citing MCL 500.3135(2)(a)(i) and (ii).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at slip op p 34-35.

It is undisputed that this Court must follow the precedents that the Michigan Supreme Court establishes,<sup>20</sup> even when those precedents reverse previously well-established law. It is with this requirement in mind that we apply the legal standards in this case.

## 2. APPLYING THE STANDARDS

### a. FACTUAL DISPUTES

#### i. CLOSED-HEAD INJURY

We turn first to Hinson's closed-head-injury claim. MCL 500.3135(7) states, in pertinent part, "[F]or a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury." Here, Dr. Rathur averred that Hinson suffered a "closed head injury"; however, this Court has held that such a diagnosis is insufficient to create a question of fact under the statute.

In *Churchman v Rickerson*,<sup>21</sup> this Court stated that "the closed-head injury provision of § 3135 requires more than a diagnosis that a plaintiff has sustained a closed-head injury." According to this Court, "the plain language of the statute requires some indication by the doctor providing testimony that the injury sustained by the plaintiff was severe."<sup>22</sup> Thus, in reviewing the plaintiff's evidence in that case, this Court ruled that "[b]ecause there is nothing in [the] affidavit, either literally or substantively, to indicate the *degree* of injury, we find that it was not sufficient to satisfy the threshold requirement of § 3135."<sup>23</sup> However, as Hinson points out, this Court went on to explain that the closed-head injury exception does not provide "the exclusive manner in which a plaintiff who has suffered a closed-head injury may establish a factual dispute precluding summary disposition."<sup>24</sup> According to this Court,

In the absence of an affidavit that satisfies the closed-head injury exception, a plaintiff may establish a factual question under the broader language set forth in subsection 3135(2)(a)(i) and (ii), which, as noted above, provide that whether an injured person has suffered serious impairment of body function is a question for the court unless the court finds that "there is no factual dispute concerning the nature and extent of the person's injuries," or, if the court finds that there is such a factual dispute, that "dispute is not material to the determination as to whether the person has suffered a serious impairment of body function . . . ."

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<sup>20</sup> *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993).

<sup>21</sup> *Churchman v Rickerson*, 240 Mich App 223, 229; 611 NW2d 333 (2000).

<sup>22</sup> *Id.* at 230.

<sup>23</sup> *Id.* at 231.

<sup>24</sup> *Id.* at 232.

Citing, *May v Sommerfield*,<sup>25</sup> this Court then explained that “a trial court cannot determine whether a plaintiff has suffered a serious impairment of body function and enter judgment in favor of a defendant as a matter of law without first making the factual findings required under subsections 3135(2)(a)(i) or (ii).”<sup>26</sup> In *May*, this Court clarified that

In determining the “nature” of [the] plaintiff’s injuries, the trial court should make appropriate findings concerning whether there is a factual dispute with respect to whether [the] plaintiff has an “objectively manifested” impairment and, if so, whether “an important body function” is impaired. In determining the “extent” of [the] plaintiff’s injuries, the trial court should make appropriate findings concerning whether there is a factual dispute with respect to whether the impairment affects [the] plaintiff’s “general ability to lead his . . . normal life.”<sup>[27]</sup>

According to *May*, this Court “cannot decide the merits of [a] plaintiff’s appeal absent these required findings.”<sup>28</sup> Thus, in both *May* and *Church*, this Court remanded the matters to the trial court to make the requisite findings.<sup>29</sup>

Thus, where, as here, the trial court simply finds that the defendant was entitled to summary disposition because the plaintiff’s evidence was insufficient to satisfy the closed-head exception of § 3135(2)(a)(ii), our precedents require this Court to remand the case for the trial court to make the requisite findings under MCL 500.3135(2)(a)(i) or (ii).<sup>30</sup>

## ii. BACK AND ANKLE INJURY

With respect to Hinson’s claims for back injury and ankle injury, the parties both offered documentary evidence in the proceedings regarding the causal relationship between these injuries and the car accident. TGI Friday’s found it significant that Hinson never mentioned back or ankle injury in the immediate aftermath of the March 2006 accident nor in her post-femur-surgery follow-up appointments. Moreover, the examination immediately following the accident revealed no such injuries. It was not until Hinson saw Dr. Rathur in June 2006 that she claimed these injuries. In our view, the evidence demonstrates that there is a material factual dispute regarding the nature of Hinson’s injuries. Accordingly, the question whether Hinson met the serious impairment of body function threshold was not a question of law for the trial court, and it erred in granting summary disposition on these claims. We therefore also remand with respect to these claims.

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<sup>25</sup> *May v Sommerfield*, 239 Mich App 197, 202; 607 NW2d 422 (1999).

<sup>26</sup> *Church*, 240 Mich App at 232.

<sup>27</sup> *May*, 239 Mich App at 202-203.

<sup>28</sup> *Id.* at 202.

<sup>29</sup> *Church*, 240 Mich App at 232; *May*, 239 Mich App at 203.

<sup>30</sup> See *Church*, 240 Mich App at 232.

There is no factual dispute, however, that Hinson suffered a right hip fracture and a left leg fracture with intermedullary rodding as a result of the accident. Thus, we turn to those claims using the test set forth in *McCormick*.

#### b. OBJECTIVELY MANIFESTED IMPAIRMENT

With respect to the first prong of the serious impairment test, “it must be established that the injured person has suffered an objectively manifested impairment[.]”<sup>31</sup> More specifically, according to *McCormick*, “the common meaning of ‘objectively manifested’ in MCL 500.3135(7) is an impairment that is evidenced by actual symptoms or conditions that someone other than the injured person would observe or perceive as impairing a body function.”<sup>32</sup> The Court noted that the plaintiff need not show that his or her *injury* was objectively manifested.<sup>33</sup> Under the plain language of the statute, “the proper inquiry is whether the *impairment* is objectively manifested.”<sup>34</sup> The Court clarified that “while an injury is the actual damage or wound, an impairment generally relates to the effect of that damage.”<sup>35</sup> Thus, “when considering an ‘impairment,’ the focus ‘is not on the injuries themselves, but how the injuries affected a particular body function.’”<sup>36</sup> The Court added that, while not *always* required, medical testimony “will *generally* be required to establish an impairment”<sup>37</sup>; that is, to establish “that there is a physical basis for their subjective complaints of pain and suffering.”<sup>38</sup>

Here, after the accident, emergency medical services transported Hinson to Sinai-Grace Hospital. In the emergency room, doctors diagnosed her with an acute distal left femoral fracture and a right acetabular fracture. She was admitted to the hospital, and the next day, doctors performed surgery to place intermedullary rodding in her left femur. After undergoing rehabilitation, Hinson was discharged from the hospital on March 24, 2006.

Hinson had a post-surgery, follow-up appointment on April 10, 2006. In his report, the attending physician noted that Hinson’s femur fracture required placement of a rod. He also noted that her right hip fracture was being allowed to heal without surgery. He further noted that Hinson was in a wheelchair, which he recommended she remain in for another month. He prescribed her Vicodin for pain.

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<sup>31</sup> *McCormick*, \_\_\_ Mich at slip op 13.

<sup>32</sup> *Id.* at slip op 14.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* (emphasis in original).

<sup>35</sup> *Id.* at slip op 15

<sup>36</sup> *Id.*, quoting *DiFranco v Pickard*, 427 Mich 32, 67; 398 NW2d 896 (1986).

<sup>37</sup> *Id.* at slip op 16 (emphasis in original).

<sup>38</sup> *Id.* at slip op 15, quoting *DiFranco*, 427 Mich at 74.

On May 8, 2006, Hinson had another follow-up appointment. The attending physician explained that Hinson “had actually been weight bearing somewhat per our restrictions for non-weight bearing bilateral lower.” He added, “She is having 0/10 pain. She is doing well.” He noted that she was only using her wheelchair intermittently. His physical examination also revealed that she was “nontender and [had] full range of motion involving both hips.” The attending physician recommended that Hinson progress with her weight bearing status “as tolerated” on her left leg. However, he recommended that she remain non-weight bearing on her right leg for two to three more weeks. The attending physician prescribed her crutches.

Hinson had another follow-up appointment on May 31, 2006. The attending physician noted that Hinson was “not requiring any pain medication at this time.” He recommended that Hinson continue to progress with her weight bearing status as tolerated on her left leg. However, he recommended that she still remain non-weight bearing on her right leg for two more weeks.

On June 14, 2006, Hinson returned, and she told the attending physician that “she has no pain whatsoever.” Hinson further told him that “she is very bull-headed and she had disregarded [the] instructions and has been on full weight bearing status.” The attending physician’s examination revealed that Hinson was walking well, with only a slight limp on the left side.

Based on the foregoing evidence, and despite the steady improvement in her condition as healing took place, we conclude that Hinson has shown an objectively manifested impairment. She suffered injury to her femur and hip. She was required to have surgery on her femur. She was hospitalized for almost two weeks. Just over two weeks after discharge, she was still having pain and was still in a wheelchair. A month after that, her pain was gone, but she was still using a wheelchair intermittently and was given crutches. It was not until over another month later that she finally was able to regain full weight bearing status, with a limp. Thus, Hinson presented evidence that she suffered actual symptoms or conditions that could objectively be perceived as impairment of a body function.

### c. IMPORTANT BODY FUNCTION

With respect to the second prong of the serious impairment test—important body function—the Court noted that the term “important” is commonly defined as “‘having great value, significance, or consequence.’”<sup>39</sup> The Court explained that whether a body function is “important” is “an inherently subjective inquiry” that will “vary depending on the person.”<sup>40</sup> That is, “because what may seem to be a trivial body function for most people may be subjectively important to some, depending on the relationship of that function to the person’s life.”<sup>41</sup>

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<sup>39</sup> *Id.* at slip op 16, quoting *The American Heritage Dictionary, Second College Edition* (1982).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at slip op 17.

Here, we conclude that Hinson's impairments satisfy this prong. She was hospitalized for two weeks, and used a wheelchair for approximately a month and a half following her discharge. Walking is indisputably an important body function.<sup>42</sup>

#### d. GENERAL ABILITY TO LEAD NORMAL LIFE

With respect to the third prong of the serious impairment test, the Court explained that in order to affect a person's general ability to lead his or her normal life, the objectively manifested impairment of an important body function must influence some of the plaintiff's capacity to live in his or her normal manner of living.<sup>43</sup> Further, because this analysis is subjective, "[d]etermining the effect or influence that the impairment has had on a plaintiff's ability to lead a normal life necessarily requires a comparison of the plaintiff's life before and after the incident."<sup>44</sup> The Court noted that this inquiry does not require that the plaintiff's ability to lead his or her normal life be *destroyed*—the statute merely requires that that ability be *affected*.<sup>45</sup> "Thus, courts should consider not only whether the impairment has led the person to completely cease a pre-incident activity or lifestyle element, but also whether, although a person is able to lead her or her pre-incident life, the person's general ability to do so was nonetheless affected."<sup>46</sup> The Court went on to clarify that, because "the plain language of the statute only requires that some of the person's *ability* to live in his or her normal manner of living has been affected, . . . there is no quantitative minimum as to the percentage of a person's normal manner of living that must be affected."<sup>47</sup> The Court further added that there is no "no express temporal requirement as to how long an impairment must last[.]"<sup>48</sup>

At the time of the accident, Hinson was 33 years old, in good health, and working as a childcare provider. During her April 2008 deposition, Hinson testified at length regarding the pain and physical limitations that resulted from the injuries to her *knee, ankle, back, and head*. Specifically, when asked what conditions were still bothering her since the accident, Hinson stated, "My ankle, my knee[,] and my back." And when asked what kinds of things she is now prevented from doing, she stated, "I can't play basketball no more. I can't dance no more. I barely can walk to the store. . . . I'm so scared I might fall . . . I don't do nothing. I sit in the house." She explained that before the accident she used to play basketball every day at the court across the street from her house. She also stated that she used to dance "[a]ll the time"; now, even when her friends do take her out, she has to sit there and watch them all having fun. Hinson

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<sup>42</sup> *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000).

<sup>43</sup> *McCormick*, \_\_\_ Mich at slip op 18-20.

<sup>44</sup> *Id.* at slip op 20.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (emphasis in original).

<sup>48</sup> *Id.* at slip op 21.

also stated that she is unable to play and run with daughter. Hinson also testified that, while before the accident she used to have sexual relations on a daily basis, she now was only able to do so about once or twice a week. She explained that such activity made her back hurt. Hinson also claimed that she was no longer able to walk or “stand up too long” because her legs would start to hurt. Hinson also testified that her brother and mother needed to help her by doing yard work, taking out the trash, and shoveling snow.

Notably, at no point during her deposition did Hinson comment on any effect on her lifestyle that specifically resulted from her femur or hip injuries. Indeed, the documentary evidence established that she was healed and walking well only a few months after the accident. Regardless, viewing the evidence in a light most favorable to Hinson as the non-moving party,<sup>49</sup> the evidence showed Hinson’s injuries affected at least *some* of Hinson’s general ability to live her normal life. Specifically, she underwent surgery, she was hospitalized for two weeks, and used a wheelchair for approximately a month and a half following her discharge. Before the accident, however, Hinson went dancing, had sexual relations on a daily basis, played basketball, played with her daughter, and did household chores. After the accident, her ability to engage in these activities was significantly reduced, if not eliminated. On the basis on this evidence, we conclude that her injuries affected at least some of Hinson’s general ability to live her normal life.

We therefore conclude that, viewing the evidence in a light most favorable to her, Hinson has satisfied all three prongs of MCL 500.3135(7) and met the threshold serious impairment requirement with respect to the injuries to her hip and femur. Accordingly, the trial court erred in granting TGI Friday’s motion for summary disposition regarding these claims.

### C. PERMANENT SERIOUS DISFIGUREMENT

Hinson argues that the trial court erred in granting TGI Friday’s motion for summary disposition on her claim of permanent serious disfigurement because there were genuine issues of material fact for trial.

#### 1. LEGAL STANDARDS

Under the no-fault insurance act,<sup>50</sup> a plaintiff may recover for noneconomic damages if she has suffered “permanent serious disfigurement.”<sup>51</sup> If there is no factual dispute concerning the nature and extent of the injuries or there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material, then whether a person has suffered a permanent

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<sup>49</sup> MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

<sup>50</sup> MCL 500.3101 *et seq.*

<sup>51</sup> MCL 500.3151(1).

serious disfigurement is a question of law for the court.<sup>52</sup>

The Legislature has not defined “permanent serious disfigurement.” However, this Court has stated that a “permanent serious disfigurement” is a long-lasting and significant change that mars, deforms, or defaces the injured person’s appearance.<sup>53</sup> In determining whether an injury constitutes a permanent serious disfigurement, a court must objectively examine the physical characteristics of the injury and assess whether, in light of the court’s common knowledge and experience and the full spectrum of the plaintiff’s life activities, the injury’s outward physical characteristics significantly mar, deform, or deface his or her overall appearance.<sup>54</sup> “Ascertaining the seriousness of disfigurement may often require physical observation by the trial court.”<sup>55</sup>

Moreover, recovery for disfigurement is not limited to those disfigurements that are always visible.<sup>56</sup> That is, a plaintiff’s ability to conceal the disfigurement is not determinative. As this Court explained,

a disfigurement may be more visible during some life activities and less visible during other life activities. Thus, whether the disfigurement is serious must be determined with regard to the injury’s physical characteristics under a totality of the circumstances, which necessarily includes those times when the disfigurement is fully exposed to view. Moreover, we do not agree that a disfigurement’s seriousness is in any way diminished because the only persons who will see it when fully exposed are the injured person or those persons who are intimately connected to the injured person; a serious disfigurement remains a serious disfigurement even when hidden from the general public.<sup>[57]</sup>

Thus, a court “must consider the effect of the disfigurement on the injured person’s appearance without the use of devices designed to conceal the disfigurement[.]”<sup>58</sup>

With respect to appellate review of a plaintiff’s claim of permanent serious disfigurement, this Court has explained a trial court’s duty, based on its “common knowledge and experience[.]”<sup>59</sup> to make a factual record for this Court’s review as follows:

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<sup>52</sup> MCL 500.3135(2)(a); *Fisher v Blankenship*, 286 Mich App 54, 59; 777 NW2d 469 (2009).

<sup>53</sup> *Fisher*, 286 Mich App at 66.

<sup>54</sup> *Id.* at 67.

<sup>55</sup> *Williams v Payne*, 131 Mich App 403, 411; 346 NW2d 564 (1984), overruled on other grounds by *DiFranco*, 427 Mich at 74.

<sup>56</sup> *Fisher*, 286 Mich App at 68.

<sup>57</sup> *Id.* (internal citations omitted).

<sup>58</sup> *Id.* at 69.

In disfigurement cases based on physical observation, . . . the appellate courts must grant great deference to the observations of the trial court on what is, in effect, a factual conclusion about the severity of an injury. The victims cannot be expected to parade their maladies through an appellate courtroom. *The trial court is expected to make adequate findings on the record. It will describe the injuries and reach a legal conclusion on whether they meet the threshold.* We will review the trial court's determination, reversing only when the court has abused its discretion.<sup>[60]</sup>

## 2. APPLYING THE STANDARDS

Hinson claims that scars on her leg constitute permanent serious disfigurement. Here, however, the trial court did not make any findings on the record regarding her claim. The trial judge simply stated that “[t]here is not enough to go any where [sic] with the . . . serious disfigurement in this case[,]” and then entered an order granting TGI Friday's motion for summary disposition without any further explanation. Thus, we must also remand this issue for the trial court to make the requisite findings and legal conclusion on the record.

## III. CONCLUSION

The trial court erred in simply finding that TGI Friday's was entitled to summary disposition because Hinson's evidence was insufficient to satisfy the closed-head exception of MCL 500.3135(2)(a)(ii). The trial court was required to determine whether Hinson created a factual dispute regarding her closed-head-injury claim under MCL 500.3135(2)(a)(i) or (ii), and it did not do so.

The trial court also erred in finding that TGI Friday's was entitled to summary disposition on Hinson's back and ankle injury claims. The evidence demonstrates that there is a material factual dispute regarding the causal nature of Hinson's injuries. According, the question whether Hinson met the serious impairment of body function threshold was not a question of law for the trial court, and it erred in granting summary disposition on these claims.

We further conclude under *McCormick* that Hinson has satisfied all three prongs of MCL 500.3135(7) and met the threshold serious impairment requirement with respect to the injuries to her hip and femur. Accordingly, the trial court erred in granting TGI Friday's motion for summary disposition regarding these claims.

Last, the trial court erred in granting TGI Friday's summary disposition without make the requisite findings and legal conclusion on the record regarding Hinson's claim of permanent serious disfigurement.

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<sup>59</sup> *Nelson v Myers*, 146 Mich App 444, 446 n 2; 381 NW2d 407 (1985).

<sup>60</sup> *Williams*, 131 Mich App at 411-412 (internal citation omitted and emphasis added).

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ William C. Whitbeck

/s/ Karen Fort Hood