

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH SPIES,

Plaintiff-Appellant,

v

ALLYN PARKER and JASON PARKER,

Defendant-Appellees.

UNPUBLISHED

June 25, 2002

No. 227581

Arenac Circuit Court

LC No. 99-006234-NI

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

K.F. Kelly, J (concurring)

I concur with the majority's decision that the trial court erred by failing to determine whether there existed a factual dispute concerning the nature and extent of plaintiff's injuries and submitting the threshold issue to the jury, but otherwise do not agree that it is unnecessary to remand to the trial court for specific findings

In accord with the decision in *May v Sommerfield*, 239 Mich App 197, 202; 607 NW2d 422 (1999), the trial court must articulate its findings as to whether there exists a factual dispute concerning: (1) whether plaintiff suffered a "serious impairment of body function" in light of "the nature and extent of plaintiff's injuries" for purposes of MCL 500.3135(2)(a)(i) or (ii); (2) whether plaintiff has an "objectively manifested" impairment which effects "an important body function"; and (3) whether the "extent" of plaintiff's impairment effects plaintiff's "general ability to lead [a] normal life." Accordingly, I would remand to the trial court and direct it to clearly articulate its findings in this regard.

I further disagree with the conclusion that plaintiff's wound does not necessarily constitute a "permanent serious disfigurement." Although plaintiff may wear long sleeves to conceal the scar, that certainly does not make the existence of the seven inch gash less permanent or less disfiguring. On these facts, a trial court could conclude that the seven inch scar on plaintiff's left forearm is indeed a "permanent serious disfigurement" for purposes of the applicable statute and then place the issue of damages squarely within the jury's province. Antithetically, a trial court could concluded that this seven inch scar on the forearm does not constitute a "permanent serious disfigurement" for purposes of the statute thus potentially placing the issue before this Court on appeal. Unless and until the latter occurs, it is not for this Court to definitively determine whether plaintiff's scar is a "permanent serious disfigurement" absent a ruling from the trial court on this threshold issue.

Accordingly, for these reasons, I would remand to the trial court for its determination on these threshold issues and for a new trial on damages if the trial court makes the requisite findings. See *Kern v Blethen-Coluni*, 240 Mich App 333, 337; 612 NW2d 838 (2000).

/s/ Kirsten Frank Kelly