# STATE OF MICHIGAN

# COURT OF APPEALS

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TARA MAE HOLLAND,

Plaintiff-Appellant,

v

JOSEPH BRADLEY, HOPE ORYSZCZAK, GENE ORYSZCZAK, GORNO TRANSPORTATION COMPANY, and XTRA LEASE-STRICK COMPANY,

Defendants-Appellees.

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UNPUBLISHED
December 22, 2009

No. 287899
Genesee Circuit Court
LC No. 07-087702-NI

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order denying reconsideration of an order to furnish a security bond and the dismissal of this lawsuit because she failed to furnish the bond. Plaintiff claims the trial court erred by imposing this obligation on her because her suit had merit and she established a financial inability to furnish the bond. Given the tenuous nature of plaintiff's suit and the manner in which plaintiff's counsel handled these proceedings, we conclude the trial court's ruling on the motion for security for costs was within an acceptable range of principled outcomes. We therefore hold that the trial court did not abuse its discretion by requiring plaintiff to furnish the security bond. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

## I. Basic Facts and Procedure

Plaintiff brought suit to recover for injuries sustained in a traffic accident. Defendant Joseph Bradley was the operator of a tractor truck owned by his employers, defendants Hope and Gene Oryszczak. The truck was pulling a trailer owned by defendant Xtra Lease and leased to defendant Gorno. At about 4:30 a.m. on January 5, 2005, Bradley, who was en route from Fenton, Michigan, to Illinois, began having coolant problems and stopped at a Speedway gas station off of I-75 in Flint Township. Bradley called the Oryszczaks and advised them that he believed he could return the truck back to the Oryszczak's business without a breakdown. The Oryszczaks agreed. Shortly after returning to the road, the vehicle lost all of its coolant while merging from I-75 onto I-69. Bradley pulled off onto the I-69 shoulder and placed orange reflective triangles behind the trailer. At approximately 7:30 a.m., Gene Oryszczak advised the state police that his tractor and trailer were disabled and on the shoulder of I-69 and indicated

that a wrecker was on its way. Oryszczak instructed Bradley to disconnect the tractor and trailer. Bradley believed that Gorno and Xtra were sending out another tractor to pick up the trailer. The snow covered slippery roads delayed the arrival of the tractor.

At approximately 12:23 p.m., plaintiff was entering the I-69 freeway. Although discovery responses provided by plaintiff to defendants indicate that plaintiff has no memory of the accident due to the injuries she sustained, her complaint alleges that she lost control of her car due to "black ice." Plaintiff struck the rear of defendants' trailer and sustained severe injuries.

The Flint Township Police Department had at least three officers participate in an accident investigation, including an accident reconstructionist. The police report generated as a result of the investigation places fault for the accident exclusively on plaintiff.

After plaintiff filed suit, defendants submitted to plaintiff 15 requests for admission relating to the facts and circumstances surrounding the accident. To every such request, plaintiff responded in whole or in part that "[p]laintiff has no memory of the same as the only recollections that she has is getting onto I-75 in Saginaw, and then waking up in Hurley Hospital . . . 5 days later."

Dissatisfied with the responses to the requests for admission, defendants filed a motion for security for costs pursuant to MCR 2.109. Defendants alleged that plaintiff was not forthcoming in providing information relating to the facts and circumstances underlying the accident. Plaintiff reasserted that, because of her permanent brain damage, she could not remember anything about the accident. Defendant responded that plaintiff's position establishes that neither plaintiff's counsel nor plaintiff did any due diligence in the investigation of plaintiff's claims. Accepting plaintiff's discovery responses at face value, defendant maintained, it is evident that absolutely no investigation was undertaken by plaintiff or her counsel to establish the existence of any legal or factual bases to support her claims. Plaintiff did not come forward with proof of any pre-suit investigation undertaken to support any theory of liability. Instead, plaintiff argued that defendants were lax in complying with discovery and had not yet provided answers to plaintiff's interrogatories or plaintiff's requests to admit.[1] Plaintiff also answered defendants' motion for security for costs with an affidavit that she was "without financial means and without property except for her personal belongings" and that she suffered a "serious and permanent brain injury [that] impairs body functions permanently. . . ." Plaintiff concluded that she "is financially unable to furnish such a security bond as demanded by defendants."

[1] In essence, defendants maintain that plaintiff filed her lawsuit without conducting a reasonable inquiry into the legal or factual support for the suit, as required by MCR 2.114(D)(2). Discovery obtained from a defendant after suit is filed is not pertinent to whether plaintiff satisfied the requirements of MCR 2.114(D)(2) before filing suit. Although not pertinent to the issues before this Court, we note that defendant asserted numerous objections to plaintiff's discovery requests. Eventually, the parties stipulated that defendants would answer amended interrogatories submitted by plaintiff. Court records indicate that defendant did indeed respond to plaintiff's amended interrogatories.

The trial court granted defendants' motion for security for costs and ordered that a bond be posted in the amount of $25,000. In so doing, the trial court stated, "I never understood how you can file a lawsuit without having the ducks in a row, having ahead of time consulted and know what your theory is and how you're going to prove it." Defendants submitted a proposed order under the seven-day rule, MCR 2.602(B)(3). Plaintiff's counsel objected to the order, but failed to appear at the hearing to settle the order. Accordingly, the trial court entered the written order originally submitted by defendants. The trial court also awarded defendants $750.00 in attorney fees to be paid by plaintiff. Plaintiff sought reconsideration. The trial court denied plaintiff's motion for reconsideration. Plaintiff never posted the required bond and the trial court dismissed plaintiff's lawsuit. This appeal followed.

## II. Legal Analysis

MCR 2.209 provides for security bonds as follows:

> **(A) Motion.** On motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court, or, if the claiming party appeals, by the trial and appellate courts. The court shall determine the amount in its discretion.
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> **(B) Exceptions.** Subrule (A) does not apply in the following circumstances:
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> (1) The court may allow a party to proceed without furnishing security for costs if the party's pleading states a legitimate claim and the party shows by affidavit that he or she is financially unable to furnish a security bond.

We review the trial court's decision to grant or deny a motion for security for costs for abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). An abuse of discretion occurs where the trial court's actions fall outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), cert den 549 US 1206; 127 S Ct 1261; 167 L Ed 2d 76 (2007). The court's determinations regarding the legitimacy of a plaintiff's claim and financial ability to post bond are findings of fact, reviewed for clear error. *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 271; 463 NW2d 254 (1990). Questions of law, including interpretation and application of court rules, are reviewed de novo. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998).

A party seeking imposition of a security bond must present a trial court with substantial reasons to impose such a bond. *Hall, supra* at 270. Substantial reasons to impose a bond may exist where a party advances a tenuous legal theory. *Id.* Requiring a party to post a security bond is most appropriate when substantial doubt is cast on the merits to that party's claim or defense, but the proceedings have yet to advance to a stage where summary dismissal is

appropriate. *Id.* When determining whether to require a security bond, the court may consider the financial status of a litigant. *Farleigh v Amalgamated Transit Union, Local 1251*, 199 Mich App 631, 634-635; 502 NW2d 371 (1993). An inability to pay costs or to furnish a security bond, standing alone, is insufficient reason to either impose or deny a security bond. The trial court must also consider whether the claim or defense under review appears legally and actually viable. *Id.*

In the present case, plaintiff's complaint is inartfully drafted. While it parrots general phrases sounding in negligence, it fails to specify a cognizable legal theory of liability. Moreover, plaintiff has no memory of the facts and circumstances giving rise to this accident and, as pointed out by defendants, plaintiff's responses to defendants' requests for admission establish that plaintiff has failed to investigate or otherwise develop a legal theory of liability in regard to any of the defendants.

The only record evidence of an investigation before this Court is the report generated by the Flint Township Police Department. The police noted that the roadway was wet. One eyewitness was interviewed at the scene of the accident. This witness stated that he was traveling at 60 miles per hour when he observed plaintiff pass him and lose control of her car. Plaintiff slid sideways into the trailer, which was parked in the shoulder of the roadway. The police report indicates plaintiff was traveling at a rate of speed that was too fast for the road conditions. The police report attributes no hazardous action to any defendant. In a supplemental report, Detective Kateri Hohn noted that the owner and operator of the tractor "made every effort to get the tractor and trailer off the expressway. All precautions were taken to safely mark the trailer and . . . notification [was provided] to authorities of the hazard."

Under the circumstances presented in this case, particularly the tenuous nature of plaintiff's claim and the manner in which plaintiff's counsel handled these proceedings, we conclude the trial court's decision to impose a security bond fell within a range of principled outcomes. Simply put, it was reasonable and proper for the trial court to impose a security bond. MCR 2.109(A).

Further, plaintiff's affidavit offered in opposition to defendant's motion for security of costs was insufficient to allow the trial court to make reasoned findings regarding her financial ability to pay the requested security bond. Her affidavit stated a conclusion of financial inability to furnish the bond, but failed to recite information on her assets, income, or expenses. Compare *Hall, supra* at 273; *Wells v Fruehauf Corp*, 170 Mich App 326, 338; 428 NW2d 1 (1988).

We conclude the trial court did not abuse its discretion by requiring plaintiff to furnish a security bond in the amount of $25,000. Because plaintiff failed to furnish the bond, the trial

court properly dismissed plaintiff's action. Dismissal is a proper remedy if a party fails to pay a security bond as ordered. *In re Surety Bond, supra* at 331.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brian K. Zahra