

STATE OF MICHIGAN
COURT OF APPEALS

MARY TURK and DOROTHY STONER,

Plaintiffs-Appellants,

v

WINONA DULA,

Defendant-Appellee.

UNPUBLISHED

March 14, 2006

No. 256259

Jackson Circuit Court

LC No. 03-001875-NI

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's grant of summary disposition to defendant on the basis that plaintiffs had not "established an objectively manifested impairment as a result of the accident," as required under no-fault act. MCL 500.3135. We reverse and remand for further proceedings.

Plaintiffs instituted the instant action alleging that they were on their daily walk when defendant negligently hit them with her vehicle and caused them injuries that constituted a serious impairment of body function under MCL 500.3135(7). On June 13, 2003, they served defendant with a request for admissions, asking defendant to admit that she had been negligent and caused their injuries, and that the injuries plaintiffs suffered were serious impairments of body function under MCL 500.3135(7). Defendant responded thirty-eight days later, on July 21, 2003, neither admitting nor denying each allegation. Defendant later filed a motion for summary disposition on the ground that plaintiffs had not sustained a serious impairment to body function.

Plaintiffs filed a counter-motion for summary disposition on the basis that defendant's response to their request for admissions was untimely under MCR 2.312(B)(1), and therefore, that the requested matters were deemed admitted. At the motion hearing, defendant addressed the issue of the late admissions, asserting that her late response was inadvertent and that she was not aware that her response was late until after she filed her motion for summary disposition. She further argued that she could neither admit nor deny the requests for admissions at the time the request was served because plaintiffs had not responded to her interrogatories. After argument, the court stated it would issue a written opinion. The court thereafter filed an opinion addressing the serious impairment issue and granting defendant's motion.

This Court reviews de novo a trial court's grant or denial of summary disposition to determine whether the moving party is entitled to judgment as a matter of law. *Maiden v*

Rozwood, 461 Mich 109, 118; 597 NW2d 817 (1999). Additionally, whether the trial court complied with the requirements of a court rule is a question of law that is reviewed de novo. *Haliw v City of Sterling Heights*, 471 Mich 700, 704; 691 NW2d 753 (2005).

Plaintiffs first argue that the circuit court erred by ignoring defendant's admissions that plaintiffs' injuries met the serious impairment threshold of the no-fault act. We agree. Michigan Court Rules provide that when a party serves a request for admissions, each matter for which a request is made is deemed admitted unless a written answer or objection is served within twenty-eight days. MCR 2.312(B)(1). Here, defendant failed to respond to plaintiffs' request for admissions until thirty-eight days after the request. The admissions were therefore "conclusively established" judicial admissions. *Radtke v Miller Canfield*, 453 Mich 413, 420-421; 551 NW2d 698 (1996).

Defendant argues that under this Court's reasoning in *Janczyk v Davis*, 125 Mich App 683; 337 NW2d 272 (1983), a circuit court has discretion to allow a party to file late answers. However, the only provision in the Michigan Court Rules for deviation from subrule (B)(1)'s sanction for late responses to requests for admissions is subrule (D)(1), which provides that "[a] matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission." MCR 2.312(D)(1); *Employers Mutual Cas Co v Petroleum Equip Inc*, 190 Mich App 57; 475 NW2d 418 (1991). Assuming defendant's comments at argument constituted a motion under MCR 2.312(D)(1), the court never addressed or granted withdrawal or amendment. Thus, the requests for admission stood admitted, and there was no basis to grant defendant's motion or deny plaintiffs'. We decline both parties' invitations to address whether it would have been proper to set aside the admissions under the circumstances. Such a determination should be made by the circuit court in the first instance.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Karen M. Fort Hood