

S T A T E   O F   M I C H I G A N  
C O U R T   O F   A P P E A L S

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WILLIAM E. CLEVELAND, VIRGINIA  
CLEVELAND, and VICTOR C. CLEVELAND,  
a Minor, by his Next Friend, WILLIAM  
E. CLEVELAND,

Plaintiffs-Appellants,

v

No. 93399

WILLIAM J. HORNE and FIREBIRD LANES,  
d/b/a J. B.'s FIREBIRD LOUNGE,

Defendants-Appellees.

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Before: Hood, P.J., and Beasley and T.M. Burns,\* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's denial of their motion for rehearing or reconsideration of its order granting summary disposition in favor of defendant Horne. The trial court based its denial upon finding that the limited retroactivity of DiFranco<sup>1</sup> rendered useless the requested reconsideration. We affirm.

In June, 1986, the trial court granted defendant Horne's motion for summary disposition on the basis that plaintiffs' injuries did not meet the threshold for non-economic losses under Michigan's no-fault legislation, as set forth in Cassidy v McGovern.<sup>2</sup> Plaintiffs were injured in a car accident for which defendant Horne accepted responsibility. According to the trial court's opinion, William and Virginia Cleveland both claimed lower back injury and periodic numbness to their hands and arms. The only objective evidence of injury was muscle spasms, although their doctor could not totally rule out disc disease. Both had returned to full time employment. The trial court found no serious impairment. Their son Victor's claim alleged injuries to his knees and pain. The court found no resulting significant interference with his life-style. The court also found Virginia and Victor Cleveland's claims of serious disfigurement to be without merit.

\* Former Court of Appeals judge, sitting on Court of Appeals by assignment.

Plaintiffs' initial claim of appeal regarding the order of summary disposition was dismissed on July 10, 1986, because of the claim still pending against defendant Firebird Lanes. On November 30, 1987, this claim against Firebird Lanes was dismissed by stipulation of the parties. Plaintiffs brought their motion for rehearing of the trial court's June, 1986 order of summary disposition in December, 1987.

Plaintiffs argue that, since there was no final judgment in their case as to all defendants when DiFranco was decided, their case was still pending and, therefore, DiFranco should apply. We disagree. DiFranco was decided December 23, 1986, and specifically provided for limited retroactivity:

"Since several of today's holdings are new or inconsistent with those articulated in Cassidy, our decision applies to the five cases before us as well as to: (1) currently pending appeals in which an issue concerning the proper interpretation of the statutory phrase 'serious impairment of body function' has been raised, (2) trials in which a jury is instructed after the date of this decision, and (3) cases in which summary disposition enters after the date of this decision."<sup>3</sup>

Defendant Horne's motion for summary disposition was granted in June, 1986. This case does not fit into any of the DiFranco retroactivity categories. Plaintiffs have not presented us with any authority for why or how this case should be an exception to these categories. The trial court did not err in refusing to rehear the motion applying the new standard.

Affirmed.

/s/ Harold Hood  
/s/ William R. Beasley  
/s/ Thomas M. Burns

<sup>1</sup> DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986), reh den sub nom Burk v Warren, 428 Mich 1206 (1987).

<sup>2</sup> 415 Mich 483; 330 NW2d 22 (1982), reh den 417 Mich 1104 (1983).

<sup>3</sup> DiFranco, supra, at p 75.