

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

WILLIE G. CALLOWAY and MABLE
CALLOWAY,

MAR 08 1989

Plaintiffs-Appellants,

v

No. 99513

MARILYN J. NAYLON and JOHN P.
NAYLON.

Defendants-Appellees.

Before: Wahls, P.J., and McDonald and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the December 30, 1986, and March 4, 1987, orders granting summary disposition to defendants and dismissing plaintiffs' claim for third party benefits under the No-Fault Act, MCL 500.3135; MSA 24.13135. We reverse.

Plaintiffs filed their complaint on July 10, 1984. After discovery of medical information defendants moved for summary disposition on the issue of serious impairment of body function. A hearing on the motion was held on December 3, 1986. On December 9, 1986, the court issued an opinion granting defendants' motion pursuant to Cassidy v McGovern, 415 Mich 483; 330 NW2d 22 (1982). On the same date, the court granted defendants' oral motion for summary disposition on plaintiffs' remaining excess wage claim. An order granting defendants' motions for summary disposition and dismissing the case was entered on December 30, 1986. Plaintiffs moved for reconsideration of the December 30 order based on our Supreme Court's December 23, 1986, issuance of DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986). Following a hearing, the court entered a March 4, 1987, order denying plaintiffs' motion.

MICHIGAN TRIAL LAWYERS ASSOCIATION
501 South Capitol, Suite 405
Lansing, Michigan 48933
Phone: (517) 482-7740

*Circuit judge, sitting on the Court of Appeals by assignment.

On appeal plaintiffs first claim a remand for reconsideration of defendants' motion in light of DiFranco, supra is required. We agree.

In DiFranco, the Supreme Court re-examined § 3135(1) of Michigan's no-fault insurance law and significantly altered the rules for serious impairment claims that were previously articulated in Cassidy, supra. The Court's decision in DiFranco is to apply to all cases in which summary disposition is entered after the date DiFranco was decided, December 23, 1986. Thus, because summary disposition in the instant case was entered December 30, 1986, after DiFranco was decided, we remand to the trial court for reconsideration of defendants' motion pursuant to the rules announced in DiFranco.

Plaintiffs' next claim the trial court erred in dismissing their excess economic claim. We agree. See Brashear v DAIE, 144 Mich App 667; 375 NW2d 785 (1985).

Reversed and remanded.

/s/Myron H. Wahls
/s/Gary R. McDonald
/s/Charles W. Simon, Jr.