

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT VALERI and AL TRUDELL,
Plaintiffs-Appellees,

MAR 16 1989

v

No. 99845

SHERRY LYNN DETATA,
Defendant-Appellant.

Before: Sullivan, P.J., and Maher and P.J. Clulo,* JJ.

PER CURIAM

Defendant appeals as of right from an order of the Wayne Circuit Court vacating its earlier grant of summary disposition to defendant and reinstating plaintiff Trudell's claim for damages for serious impairment of bodily function arising from an automobile accident. We affirm.

This accident arose from an automobile collision on July 21, 1985, in Garden City, Michigan. Plaintiff Al Trudell was a passenger in an automobile owned and driven by plaintiff Robert Valeri which was struck and driven by an automobile driven by defendant Sherry Lynn Detata. Valeri settled his lawsuit with defendant prior to trial and is not interested in this appeal. Plaintiff Trudell sustained serious injuries to his neck and back as a result of the collision, and was unable to return to work for six months. Plaintiff Trudell continues to experience pain in his neck for which he takes aspirin.

Defendant brought a motion for summary disposition on grounds that plaintiff Trudell's injuries did not meet the threshold of serious impairment of a body function as set out in Cassidy v McGovern, 415 Mich 483; 330 NW2d 22 (1982), and that therefore his claim was barred by the no-fault act. At the hearing on the motion on October 24, 1986, plaintiff's counsel urged the trial court to reserve its ruling, since the issue was

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

at that time before the Michigan Supreme Court for review. The trial court, however, declined, stating:

"I believe a case should be disposed of. You also have a year and a day to seek relief from a judge, if there is a change, and if the Supreme Court rules, and if that change is in your favor."

The order granting summary disposition in favor of defendant was entered on November 17, 1986.

The Supreme Court released its opinion in DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986), on December 23, 1986. On the basis of the change in the law occasioned by that decision, plaintiff Trudell filed a motion on January 21, 1987, for relief from the earlier order of summary disposition. The trial court heard this motion on March 6, 1987, and ruled in favor of plaintiff Trudell, reinstating the case and placing it on the progress docket.

On appeal, defendant argues that the trial judge abused her discretion by granting relief to plaintiff Trudell from the November 17, 1986 order of summary disposition. We disagree.

MCR 2.612(C)(1) provides that a court may grant relief to a party from the operation of a judgment for any reason justifying relief. Three requirements must be met before relief may be granted under this section: (1) the reason for setting aside the judgment must not fall under subrules (a)-(e); (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside; and (3) extraordinary circumstances must exist which mandate setting aside the judgment in order to achieve justice. Jackson Printing Co, Inc v Mitan, 169 Mich App 334, 340; 425 NW2d 791 (1988). The trial court's decision on a motion for relief from a judgment under MCR 2.612(C) is discretionary, and will not be disturbed on appeal absent an abuse of discretion. Jackson Printing, supra.

In the instant case, when the trial court made its original judgment, it told plaintiff's counsel that he could obtain relief from judgment if the Supreme Court ruled in his

favor in DiFranco (which it did) and if counsel requested relief within a year and a day.¹ Although the proper course of action for plaintiff might have been to take an immediate appeal from the adverse judgment, we believe the language of MCR 2.612(C)(1)(f) is broad enough to apply to the instant situation. The trial court misled plaintiff's counsel into believing that the proper procedure for obtaining relief from judgment was to file a motion for relief from judgment in that court. To reinstate the order of summary disposition to defendant, as she now urges, would essentially punish plaintiff Trudell for the trial court's mistake. We cannot say the trial court abused its discretion in setting aside the summary disposition order to defendant.

Affirmed.

Joseph B. Sullivan
Richard M. Maher
Paul J. Clulo

¹ Apparently, the trial court was speaking of the one-year period for obtaining relief from judgment for the grounds enumerated in MCR 2.612(C)(1)(a), (b), and (c). See MCR 2.612(C)(2). However, none of those grounds apply here. Instead, a motion to set aside a judgment pursuant to MCR 2.612(C)(1)(f) need only be made within a "reasonable time." MCR 2.612(C)(2). In the instant case, plaintiff filed his motion approximately two months after entry of the summary disposition order and within one month of the release date of DiFranco. We believe that constitutes a reasonable time.