STATE OF MICHIGAN

COURT OF APPEALS

DAVID KOSOSKI and
SUZANNE KOSOSKI,

Plaintiffs-Appellants,

v No. 111554

WAYNE MICHAEL MATHIAS and
JOSEPH VANDERMISSEN,

Defendants-Appellees and
Third-Party Plaintiffs,

and

DANIEL STACHOWICZ,

Third-Party Defendant-Appellee.

Before: Gillis, P.J., and Sullivan and Cavanagh, JJ.

PER CURIAM.

Plaintiffs David and Suzanne Kososki filed this action on October 12, 1984, alleging serious impairment of a body function and permanent serious disfigurement under the no-fault act, MCL 500.3135; MSA 24.13135. Summary disposition in favor of defendants was entered March 17, 1986. MCR 2.116(C)(10). Plaintiffs moved for reinstatement and a nunc pro tunc final order pursuant to MCR 2.604. On August 18, 1988, the trial court denied the motion for reinstatement and issued a nunc pro tunc final order. Plaintiffs appeal by right. We affirm.

Plaintiffs first claim the order for summary disposition entered March 17, 1986 was not a final order divesting the circuit court of jurisdiction to hear plaintiffs' motion for reinstatement. All parties agree and the trial court exercised jurisdiction in hearing plaintiffs' reinstatement motion. Plaintiffs have not presented an issue which demands relief.

Plaintiffs next argue in favor of retroactive application of DiFranco v Pickard, 427 Mich 32; 398 NW2d 896

(1986) to the March 17, 1986 summary disposition order because it was not entered as a final order until August 18, 1988. We find this argument to be without merit. In DiFranco, our Supreme Court limited the retroactivity of its decision to (1) currently pending appeals, (2) trials in which a jury was instructed after the date of the decision, and (3) "cases in which summary disposition enters after the date of this decision." DiFranco, supra, p 75. The Court looked at when an order was entered, not whether the order was final.

Plaintiffs nevertheless claim that appeal of the March 17, 1986 summary disposition was "effectively" curtailed in these circumstances by the nunc pro tunc order. We disagree. Plaintiffs could have requested interlocutory leave to appeal immediately after the order was issued or, as they have done here, obtained a final judgment and appealed by right. MCR 2.116(J)(2)(a) and (c). The trial court did not err in holding that DiFranco did not apply to the summary disposition order entered March 17, 1986.

Plaintiffs final contention is that the trial court erred in granting summary disposition on plaintiffs' claims for serious impairment of body function and permanent serious disfigurement. We disagree. At the hearing on summary disposition, there was no dispute as to the extent of plaintiffs' injuries. Plaintiffs offered no medical reports and admitted the authenticity of the reports offered by defendants. Therefore, the court could have properly decided, under Cassidy v McGovern, 415 Mich 483; 330 NW2d 22 (1982), that plaintiffs had not sustained their claim as a matter of law.

Affirmed.

/s/ Joseph H. Gillis
/s/ Joseph B. Sullivan
/s/ Mark J. Cavanagh