STATE OF MICHIGAN

COURT OF APPEALS

RICHARD J. HELFRICH and
BEVERLY HELFRICH, jointly and severally,

Plaintiffs-Appellants,

v

FARM BUREAU INSURANCE GROUP,
a Michigan corporation,

Defendant-Appellee.

July 26, 1993

No. 144041
LC No. 88-7748 CK

RICHARD J. HELFRICH and
BEVERLY HELFRICH, jointly and severally,

Plaintiffs-Appellees
Cross-Appellants,

v

FARM BUREAU INSURANCE GROUP,
a Michigan corporation,

Defendant-Appellant,
Cross-Appellee.

No. 145527
LC No. 88-7748 CK

RICHARD J. HELFRICH,

Plaintiff-Appellant,

v

FARM BUREAU INSURANCE GROUP,
a Michigan corporation,

Defendant-Appellee.

No. 147226
LC No. 88-7748 CK

Before: Sawyer, P.J., and Hood and Weaver, JJ.

PER CURIAM.

Richard Helfrich, plaintiff, brought suit against defendant Farm Bureau Insurance Group, seeking first-party benefits under the no-fault act, MCL 500.3101 et seq; MSA 24.13101 et seq. Plaintiff sustained very serious injuries on December 29, 1986 when he fell while exiting his vehicle. Defendant was plaintiff's no-fault insurer at the time of the accident, and plaintiff claimed no-fault benefits for services, mileage for medical care, and wage loss. Defendant moved for summary disposition under MCR 2.116(c)(10) regarding plaintiff's claim for wage loss, alleging that for many years prior to the accident plaintiff had been receiving Social Security total disability benefits. The trial judge granted defendant's motion, ruling that because plaintiff was receiving total disability benefits from Social Security, he was incapable of work and therefore ineligible for no-fault work loss benefits. The court granted in part plaintiff's motion to produce first-party

the action." However, the trial judge refused to do this, citing the "interest of justice" provision of MCR 2.405(D)(3). In doing so, the court considered facts that plaintiff's offer of judgment for $30,000 was supported by a mediation ward of $30,000; that defendant's offer of $2,500 was more or less justified because of the small verdict which the jury returned; that the court thought that a different jury might well have returned a verdict considerably larger than the one received here; that the situation was not an egregious one in the sense it should have been settled; that in this case a reasonable person might believe the evidence justifies a substantial verdict, and that defendant is an insurance company and plaintiff is a disabled man with meager assets from which to pay an award to attorney fees. MCR 2.405(D)(3) provides that the court may, in the interest of justice, refuse to award an attorney fee under this rule. A trial court may properly consider the good faith or reasonable conduct of the parties in resolving whether attorney fees are appropriate. Stamp v Hagerman, 181 Mich App 332; 448 NW2d 849 (1989). Here, we conclude that based on the circumstances as outlined by the trial court, the court did abuse its discretion in refusing to award attorney fees. The language of MCR 2.405(D)(3) was not intended to permit awards of attorney fees only in exceptional cases where there existed bad faith or unreasonable conduct. Sanders v Monical Machinery Co, 163 Mich App 689; 415 NW2d 276 (1987). In Gudewicza v Matt's Catering, Inc, this Court expressly rejected the trial court's denial of fees under MCR 2.405 based solely on an offeree's "good faith rejection" of an offer of judgment. This Court concluded that the public policy behind the rule would not be served by denying fees based upon an offeree's good faith rejection. Id.

Plaintiff argues that because plaintiff's wife was dismissed as a party pursuant to stipulation of the parties on or about July 1, 1991, no costs can be assessed against Richard Helfrich individually because he was not the "offeree" under the offers of judgment exchanged earlier in the case. Plaintiff further contends that in view of Beverly's dismissal, it is impossible to compare the judgment with the earlier offer, and MCR 2.405 is therefore inapplicable. Plaintiff cites no authority in support of this argument, and we decline to address it.

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Plaintiff asserts the court erred in awarding taxable costs to defendant in the amount of $415.89 and denying actual costs to plaintiff.

Plaintiff argues that because of his wife's subsequent dismissal from the case, the average offer $16,250 must be split or allocated between both plaintiff and his wife, thus creating a situation where the adjusted verdict of $11,038.74 exceeded the "split" average offer of $8,125, entitling plaintiff to recover costs pursuant to MCR 2.405(D)(2). Beverly Helfrich never had a valid claim against defendant; she was not a proper party to this action and her dismissal therefore had no effect on the application of MCR 2.405 to this case.

We reverse that portion of the judgment refusing to award defendant attorney fees pursuant to MCR 2.405(D) and affirm in all other respects. We remand for a determination of reasonable attorney fees. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Harold Hood
/s/ Elizabeth A. Weaver