

Court of Appeals, State of Michigan

ORDER

Joseph Capaldi v Auto Club Insurance Association

Docket No. 323836

LC No. 13-014034-NF

Cynthia Diane Stephens
Presiding Judge

Christopher M. Murray

Karen M. Fort Hood
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(E)(2), the Court orders that the September 2, 2014 order granting defendant's motion to file notice of a nonparty at fault is REVERSED. MCR 2.112(K)(3)(c) provides that the notice must be filed within 91 days after the party files its first responsive pleading and that the court shall allow a later filing of the notice on a showing that the facts on which the notice is based were not and could not with reasonable diligence have been known to the moving party earlier. Defendant failed to comply with the time requirements of MCR 2.112(K) and did not set forth facts to demonstrate that it did not know, or could not with reasonable diligence have discovered, that plaintiff slipped and fell on ice in Stoneridge's parking lot. To the contrary, both defendant's answer to plaintiff's complaint and defendant's motion to file notice to add nonparty at fault appear to concede that plaintiff's initial personal protection insurance claim informed defendant that plaintiff lost his footing on black ice at the Stoneridge parking lot. Because defendant did not demonstrate the factual predicate necessary to excuse its untimely filing, the trial court erred in finding that compliance with the court rule was discretionary and in granting the motion. *Snyder v Advantage Health*, 281 Mich App 493, 500-506; 760 NW2d 834 (2008).

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 8 4 2015

Date


Chief Clerk