

Court of Appeals, State of Michigan

ORDER

Estate of Angela Renee Atkins v Mitchell King Donley

Docket No. 350509

LC No. 18-008424-NI

Kirsten Frank Kelly
Presiding Judge

Cynthia Diane Stephens

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(E)(2), that the August 16, 2019, order of the Wayne Circuit Court denying defendants' motion to amend affirmative defenses hereby is REVERSED. Generally, leave to amend shall be freely given, MCR 2.118(A)(2). The materials before this Court do not reflect undue delay, where defendants filed the motion in August 2019, within weeks of obtaining the toxicology lab report from plaintiffs, who were on notice of the potential defenses by January 2019. The defenses would not be futile, where the toxicology report is relevant to the cause of the accident, and such results are admissible, see *People v Wager*, 460 Mich 118, 121, 124-125; 594 NW2d 487 (1999). A motion to amend should be granted absent undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies, undue prejudice, or futility. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). The case is remanded to the circuit court for further proceedings consistent with this order.

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

The Court retains no further jurisdiction.



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

OCT 17 2019

Date


Chief Clerk