

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIAM FOSTER, Personal Representative of the  
Estate of LORRAINE FOSTER, Deceased,

Plaintiff–Appellant,

v

HARPER HOSPITAL,

Defendant–Appellee.

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UNPUBLISHED

March 7, 1997

No. 180164

Wayne Circuit Court

LC No. 93-313280

Before: Reilly, P.J., and White, and P.D. Schaefer,\* JJ.

PER CURIAM.

William Foster, as the personal representative of his wife’s estate, filed a wrongful death action against defendant alleging medical malpractice. Plaintiff filed an affidavit of meritorious claim with the complaint pursuant to MCL 600.2912(d); MSA 27A.2912(d). After discovery and mediation, defendant moved for a bond for security for costs. The circuit court granted the motion and entered an order requiring plaintiff to post a bond in the amount of \$10,000. When plaintiff failed to post the bond, the circuit court dismissed the complaint with prejudice. Plaintiff appeals as of right, and we reverse.

While we reject the argument that the filing of an affidavit of meritorious claim precludes the issuance of an order for security for costs, we agree that the circuit court abused its discretion in ordering plaintiff to post the \$10,000 bond without examining plaintiff’s claim and based solely on the estate’s inability to satisfy potential sanctions and costs.

It is within the trial court’s discretion to order security for costs and this Court will not reverse unless the imposition of security is an abuse of discretion. *Farleigh v Amalgamated Transit Union, Local 1251*, 199 Mich App 631, 633; 502 NW2d 371 (1993). Security should not be required, however, unless there is a substantial reason for doing so. *Farleigh, supra*, 199 Mich App 634.

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

In granting defendant's motion, the circuit court never examined plaintiff's complaint to see if it asserted a tenuous legal theory or made allegations against defendant that were completely groundless and unwarranted. *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 270; 463 NW2d 254 (1990); *Wells v Fruehauf*, 170 Mich App 326, 335; 428 NW2d 1 (1988). From a review of the record, it appears that the only factors considered by the circuit court in ruling on defendant's motion were the personal representative's poverty and conduct as an individual, and the fact that there was no money in the estate. Under these circumstances, the circuit court abused its discretion in granting defendant's motion. *Hall, supra* at 271. A plaintiff's poverty alone is not a sufficient reason to grant a motion for security.

Plaintiff also claims that the circuit court abused its discretion in failing to waive the bond and in dismissing the complaint when he failed to post the bond. A court may allow a party to proceed without furnishing security for costs if the party's pleading states a legitimate claim and the party shows by affidavit that he or she is financially unable to furnish a security bond. MCR 2.109(C)(1). This decision is within the sound discretion of the trial court. *Hall, supra* at 271; *Wells, supra*, 170 Mich App 336.

Plaintiff's complaint states a legitimate claim against defendant. The affidavit plaintiff submitted to the circuit court showed that the estate was unable to post the bond. It is a rare case in which an indigent plaintiff pleading a valid theory of liability will be required to post security. *Gaffier v St Johns Hospital*, 68 Mich App 474, 478; 243 NW2d 20 (1976). Here, the circuit court appears to have found persuasive defendant's allegation that the personal representative appropriated assets of the estate in his personal capacity by cashing medical insurance checks belonging to the decedent. However, we conclude that without some determination that the proceeds would or should have been available to satisfy costs, the court erred in requiring security where the complaint alleged a legitimate claim, there was no showing that the allegations were groundless and unwarranted, and plaintiff established an inability to post a bond.

The circuit court's orders requiring plaintiff to post a security bond and dismissing plaintiff's cause of action for failing to post the bond are, therefore, reversed, and this case is remanded to the circuit court.

Reversed and remanded. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly  
/s/ Helene N. White  
/s/ Philip D. Schaefer