STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA HOLLAND,

Plaintiff-Appellant,

v

R & M CONTRACTING,

Defendant-Appellee.

UNPUBLISHED
March 25, 1997

No. 190672
Wayne Circuit Court
LC No. 93-336169

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

This case arises from plaintiff's February 3, 1992 slip and fall on a patch of ice in a parking lot owed by her employer, Frito-Lay, and maintained by defendant. A central issue at trial was whether defendant or Frito-Lay was responsible for deciding when the lot should be salted. Plaintiff appeals as of right from a judgment of no cause of action entered in favor of defendant after a jury found that defendant had not been negligent in its ice removal. We affirm.

Plaintiff's first claim is procedural. Specifically, she contends that the trial court abused its discretion when it allowed defendant to submit late answers to her request for admissions. The argument is without merit. MCR 2.312(B)(1) provides that a matter is deemed admitted if the party receiving the request fails to serve a written answer within twenty-eight days. *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991). The goal of the rule is to "expedite the pending action" by facilitating proof and narrowing the issues. *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 419-420; 551 NW2d 698 (1996). However, the trial court has discretion to allow a party, for good cause, to amend an admission under MCR 2.312(D)(1). *Medbury, supra*, p 556. When determining whether to allow an amendment, the court should consider whether: (1) allowing late answers would aid in the presentation of the action; (2) the other party would be prejudiced by the late answers; and (3) the reason for the delay was inadvertent *Janczyk v Davis*, 125 Mich App 683, 692-693; 337 NW2d 272 (1983). Although *Janczyk* was decided under GCR 1963, 312.2, rather than MCR 2.312(D)(1), continued application of the *Janczyk* factors is reasonable because the standard for allowing a party to amend an admission -- a showing of "good cause" – remains the same.

While this Court does not condone defendant's tardy response to plaintiff's request for admissions, upon consideration of the facts before the trial court, we cannot say that its decision to allow a late response constituted an abuse of discretion. *Medbury, supra,* pp 556-557. Defendant's failure to respond did not appear calculated to prejudice plaintiff; defendant's attorney had promptly forwarded the request to defendant with instructions to comply. Further, there was no indication that plaintiff would be prejudiced by the court's decision to allow the late answers, and the court allowed plaintiff extra discovery time to make up for the time plaintiff would have had if defendant had answered in a timely fashion. Under these circumstances, the trial court properly granted defendant's motion to file late answers to plaintiff's request for admissions.

Plaintiff next contends that the trial court erred in denying her motion for mistrial after the jury was exposed to cards, not properly admitted into evidence, that were stapled to the back of defendant's invoices. The cards, signed by Frito-Lay employees, indicated that snow removal and salting services had been performed by defendant. Plaintiff argues that the cards caused the jury to believe that defendant had an "on request" contract.

Absent an abuse of discretion resulting in a miscarriage of justice, this Court will not reverse a trial court's decision to deny a motion for mistrial. *Schutte v Celotex Corp*, 196 Mich App 135, 142; 492 NW2d 773 (1992). A miscarriage of justice occurs when a party is denied a fair and impartial trial. See *Vaughn v Grand Trunk W R Co*, 153 Mich App 575, 579; 396 NW2d 440 (1986). In this case, the fact that a Frito-Lay employee signed off on defendant's work is equally consistent with an "as needed" contract as with an "on request" contract. As far as the jury could tell, the cards simply indicated that somebody at Frito-Lay had given defendant credit for actually performing the services. Furthermore, the only cards seen by the jury were those stapled to invoices for services performed *before* formation of the contract between defendant and Frito-Lay. These particular cards had little probative value regarding the terms of the disputed contract. We conclude that the improper but brief introduction of this marginally relevant evidence was not sufficiently prejudicial to deny plaintiff a fair and impartial trial. *Vaughn, supra,* p 579. The trial court did not abuse its discretion when it denied plaintiff's motion for mistrial. *Schutte, supra,* p 196.

Affirmed. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Barbara B. MacKenzie
/s/ Myron H. Wahls
/s/ Jane E. Markey