

STATE OF MICHIGAN  
COURT OF APPEALS

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MARY MARGARET McCABE,  
Plaintiff-Appellant,

UNPUBLISHED  
October 9, 2007

v

MILLER & ASSOCIATES, L.L.P., IMHOFF &  
ASSOCIATES, and MITCHELL H. NELSON,

No. 275498  
Oakland Circuit Court  
LC No. 2005-070747-NM

Defendants-Appellees.

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Before: Owens, P.J., and White and Murray, JJ.

WHITE, J. (*concurring*).

I agree that in the instant case it is clear that this Court's December 12, 2003 order denying the appeal for lack of merit was not only a decision on the merits for res judicata purposes, but was also a decision that the substance of the appeal lacked merit.

I also am constrained to agree that the denial of the motion to amend was not an abuse of discretion under the circumstances that plaintiff did not alert the circuit court, at the July 12 hearing on the motion for summary disposition, that plaintiff had not yet deposed defendant, and there was a possibility of additional allegations of negligence; plaintiff did not file the motion to amend until September 5, although she had her expert's opinion by August 23,<sup>1</sup> and knew that the motions for summary disposition were pending; plaintiff never responded to defendant's contentions that the expert's additional opinions were based on records that were produced before the first hearing on the motion for summary disposition; and the proposed amendment raised claims that were entirely different than those previously alleged.

/s/ Helene N. White

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<sup>1</sup> Ordinarily, this would not be regarded as a significant delay, but under the circumstances, plaintiff should have filed the motion immediately.