

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

---

MICHELLE GRAHAM and STEVE GRAHAM,

Plaintiffs-Appellants,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant/Cross-Plaintiff-Appellee,

and

ROBIN LYNN BAUMAN,

Defendant/Cross-Defendant.

---

UNPUBLISHED

August 5, 2008

No. 278382

Monroe Circuit Court

LC No. 05-019290-NI

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order dismissing their action for failure to post a \$7,500 bond for security for costs. Plaintiffs argue that the trial court abused its discretion in requiring that a bond be posted. We disagree and affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This action arises from an automobile accident on November 5, 2003, in which a vehicle driven by Robin Bauman struck the back of a minivan being driven by plaintiff Michelle Graham.<sup>1</sup> Plaintiffs allege that the accident caused injuries, including injuries to Michelle's neck, back, legs, and knees, that the injuries were serious and permanent, and that Michelle suffered a serious impairment of an important body function. Plaintiffs settled the claim with Bauman but sought recovery of underinsured motorist benefits under an insurance policy with defendant Auto-Owners Insurance Company ("defendant").

---

<sup>1</sup> As used in this opinion, the singular term "plaintiff" shall refer to Michelle Graham only. The loss of consortium claim raised by Steve Graham is derivative in nature.

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that Michelle did not suffer a serious impairment of an important body function as a result of the accident. In support of its motion, defendant submitted medical records, deposition testimony, and a surveillance videotape of Michelle taken on several dates in 2006. The trial court denied the motion, but noted that the videotape cast doubt on the credibility of plaintiffs' claims and noted that a bond for security for costs might be appropriate. Defendant thereafter filed a motion requesting that plaintiffs be required to post a bond of \$7,500 under MCR 2.109(A), to cover costs and other recoverable expenses that may be incurred in taking the case to trial. The trial court granted the motion and ordered plaintiffs to post a bond of \$7,500 within 28 days. Plaintiffs failed to post a bond and the trial court granted defendant's motion to dismiss the action under MCR 2.504(B)(1).

On appeal, plaintiffs argue that the trial court abused its discretion in ordering that a bond be posted, because they presented evidence showing that Michelle Graham had a disabling injury lasting more than two years that was caused by the automobile accident.

This Court reviews a trial court's decision to require a security bond for an abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997).

"Security should not be required unless there is a substantial reason for doing so. A 'substantial reason' for requiring security may exist where there is a 'tenuous legal theory of liability,' or where there is good reason to believe that a party's allegations are 'groundless and unwarranted.'" *Id.*, pp 331-332 (citations omitted).

The trial court did not abuse its discretion in ordering plaintiffs to post a security bond. The submitted evidence provided good reason to believe that plaintiffs would not be able to meet the no-fault threshold for recovery of noneconomic damages, because Michelle's claimed impairment was temporary and not extensive, causation was doubtful, and her credibility was questionable.

The videotape of Michelle lifting, leaning, and twisting without any indication of impairment suggested that she was not suffering a serious impairment of body function as of May 2006. As noted by plaintiffs, residual impairment is not essential to establishing a threshold injury, and "an impairment of short duration may constitute a serious impairment of body function if its effect on the plaintiff's life is extensive." *Williams v Medukas*, 266 Mich App 505, 508; 702 NW2d 667 (2005); see also *Benefiel v Auto-Owners Ins Co*, 277 Mich App 412, 424; 745 NW2d 174 (2007), lv granted 481 Mich 885 (2008). However, the present case does not appear to involve any period in which Michelle was significantly incapacitated. Although she did not return to work after the accident, the only disability certificate that she presented was dated December 28, 2006, and it did not state that she was disabled from work. Plaintiffs' ability to establish a short-term impairment that met the *Kreiner* threshold was unlikely.

The evidence also indicated that plaintiffs would have difficulty establishing that Michelle's claimed injury was caused by the automobile accident. Defendant presented evidence that Michelle's complaint of back pain pre-dated the accident. Less than a week before the accident, she reported that she felt pain on a daily basis, lasting all day, in her lower back, neck, fingers, ankles, feet, and toes, and that she had had the pain for three years. Medical records

noted degenerative changes. One of her doctors stated in a letter to another doctor that Michelle “was teaching her daughter gymnastics about the time that this problem arose.”

Further, Michelle’s deposition testimony regarding the circumstances of the accident, which was inconsistent with other accounts, along with the videotaped surveillance evidence depicting Michelle engaged in various activities, provided a basis to question her credibility, thereby providing additional support for the trial court’s finding that there was good reason to believe that plaintiffs would not be successful in their action.

Plaintiffs’ reliance on *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265; 463 NW2d 254 (1990), is misplaced because that case is factually distinguishable. In *Hall*, it appears that the defendant had not challenged the plaintiffs’ proofs with a motion for summary disposition before the trial court ordered the plaintiffs to post security, and this Court noted that there was “*significant* support” for the plaintiffs’ claims. *Id.*, p 271 (emphasis in *Hall*). The same is not true in the present case.

We conclude that the trial court did not abuse its discretion in ordering plaintiffs to post a bond for security for costs. Because plaintiffs failed to post a bond as ordered, the trial court did not err in dismissing the action.

Affirmed.

/s/ Patrick M. Meter  
/s/ Michael R. Smolenski  
/s/ Deborah A. Servitto