

Court of Appeals, State of Michigan

ORDER

Joshua Tarratt-Hill v Shape Corporation

Docket No. 320279

LC No. 13-003367-NI

Jane M. Beckering
Presiding Judge

Jane E. Markey

Douglas B. Shapiro
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court VACATES the circuit court's January 20, 2014 order granting defendant's motion to file a late notice of non-party fault, which the circuit court based largely on MCR 1.105. "It must be remembered that MCR 1.105 governs the construction of the rules; it is not a 'harmless error' rule that justifies simply ignoring the rules in specific cases where the substantial rights of the parties are not adversely impacted." 1 Longhofer, Michigan Court Rules Practice, 6th ed, pp 20-21. MCR 2.112(K)(3)(c) plainly says, "The notice must be filed within 91 days after the party files its first responsive pleading." That subrule provides for filing beyond that time period on specified conditions provided the plaintiff is not prejudiced. But whether a plaintiff is prejudiced by the filing of a late notice of non-party fault is determined after the defendant has established that the pertinent facts were not and could not have been known to him or her before the end of the 91-day period. Defendant knew the "the facts on which the notice is based" 40 days before the end of that period, yet did not file the notice until after the period expired.

The circuit court's ruling is REVERSED. We REMAND for further proceedings consistent with this order. We do not retain jurisdiction.



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

JUN 18 2014

Date

Jerome W. Zimmer Jr.
Chief Clerk