

STATE OF MICHIGAN
COURT OF APPEALS

APRIL PATRICIA SMITH-HILGER,
Plaintiff-Appellant,

UNPUBLISHED
November 17, 2011

v

ARBOR HILLS HAIR & BODY SALON, INC.,
and MARIE ROOT,

No. 299911
Washtenaw Circuit Court
LC No. 09-000861-NZ

Defendants-Appellees.

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

April Patricia Smith-Hilger appeals as of right the trial court's order granting summary disposition¹ in favor of Arbor Hills Hair & Body Salon, Inc. (hereinafter "Arbor Hills") and Marie Root in this personal injury action. We affirm.

On July 20, 2006, Smith-Hilger went to Arbor Hills and was provided a hair coloring service by Root. On July 17, 2009, Smith-Hilger filed a complaint against Arbor Hills and Root alleging negligence, battery, negligent supervision and violations of the Michigan Consumer Protection Act. The complaint claimed that Root negligently left hair coloring products on Smith-Hilger's hair for over 90 minutes causing skin and scalp irritation, swelling and subsequent hair loss.

Arbor Hills and Root thereafter moved for summary disposition² arguing that Smith-Hilger could not establish that their actions caused her hair loss, which is required to prevail on a negligence claim.³ A hearing on the motion was set for August 12, 2010; however, after Smith-

¹ MCR 2.116(C)(10).

² *Id.*

³ *Hampton v Waste Mgmt of Mich, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

Hilger failed to respond, the trial court dispensed with oral arguments⁴ and granted summary disposition in favor of Arbor Hills and Root on August 10, 2010.

We review a trial court's decision to grant summary disposition de novo.⁵ Arbor Hills and Root's motion for summary disposition was brought pursuant to MCR 2.116(C)(10). "MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial."⁶ The evidence is viewed in the light most favorable to the nonmoving party.⁷ "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to a judgment as a matter of law."⁸ A trial court's refusal to entertain motions and briefs filed after the deadline set by the applicable court rules is typically reviewed for an abuse of discretion.⁹ Since Smith-Hilger did not challenge the trial court's enforcement of the court rules in the lower court, we review these unpreserved issues for plain error.¹⁰ Plain error must be outcome-determinative in order to require reversal.¹¹

On appeal, Smith-Hilger argues that the trial court should not have dispensed with oral argument because she failed to respond to the summary disposition motion. We disagree. The court rules explicitly permit a trial court to dispense with oral arguments¹², and require that "any response to the motion (including brief and any affidavits) . . . be filed and served at least 7 days before the hearing."¹³ We find no merit in Smith-Hilger's argument that because she was under stress, exhausted and "impaired," was not a lawyer and did not know the legal requirements for responding to Arbor Hills and Root's motion, the court rules should not be enforced against her. Appearance in propria persona does not excuse a party's obligation to comply with the court rules.¹⁴ We find that the trial court did not err when it applied the court rules as written.

Smith-Hilger also contends that the trial court should not have granted summary disposition in favor of Arbor Hills and Root. We disagree. Summary disposition in favor of the

⁴ MCR 2.119(E)(3).

⁵ *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006).

⁶ *Spiek v Mich Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).

⁷ *Coblentz*, 475 Mich at 567-568.

⁸ *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

⁹ *Kemerko Clawson LLC v RXIV Inc*, 269 Mich App 347, 349; 711 NW2d 801 (2005).

¹⁰ *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

¹¹ *Guerrero v Smith*, 280 Mich App 647, 657-658; 761 NW2d 723 (2008).

¹² MCR 2.119(E)(3).

¹³ MCR 2.116(G)(1)(a)(ii).

¹⁴ *Young v Young*, 211 Mich App 446, 448; 536 NW2d 254 (1995).

moving party is required when the nonmoving party fails to satisfy the burden of establishing that a genuine issue of material fact exists.¹⁵ When a motion is brought under MCR 2.116(C)(10):

[A]n adverse party may not rest upon the mere allegations or denials of [her] pleading, but must, by affidavits or as otherwise provided . . . set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against [her].¹⁶

Smith-Hilger does not dispute that she failed to respond to Arbor Hills and Root's motion for summary disposition. Smith-Hilger did not provide any substantive evidence that Arbor Hills and Root were the cause of her alleged damages, and her assertion that they were the cause cannot establish an issue of fact to survive summary disposition.¹⁷ We find that the trial court did not err in granting summary disposition in favor of Arbor Hills and Root as the evidence they presented demonstrated that there was no genuine issue regarding any material fact.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

¹⁵ MCR 2.116(G)(4); *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 725; 691 NW2d 1 (2005).

¹⁶ *Maiden*, 461 Mich at 120-121.

¹⁷ *Id.* at 121.