

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICIA A. SPOOR, Personal Representative of  
the Estate of JAMES J. LEWIS,

UNPUBLISHED  
June 8, 2006

Plaintiff-Appellant,

v

No. 258497  
Wexford Circuit Court  
LC No. 03-017429-NO

JEFFREY CHUHRAN, JOSEPH CICCHELLI,  
JEREMY KASTL, KEVIN KASTL and DORIE R.  
KASTL,

Defendants-Appellees,

and

ANNETTE JONES and MICHAEL R. JONES,

Defendants.

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Before: Sawyer, P.J., and Kelly and Davis, JJ.

DAVIS, J. (*dissenting*).

I agree with the majority's recitation of the underlying facts, and I agree with the majority's statement of the applicable standard of review. However, I respectfully disagree with the majority's finding that the trial court did not abuse its discretion by requiring plaintiff to post a security bond.

As the majority states, a trial court's decision whether to require a security bond is reviewed for an abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). The trial court's relevant findings of fact are reviewed for clear error. *Id.*, 333. Under MCR 2.109(A), the trial court *may* require a plaintiff to post a security bond if there is a "substantial reason" for doing so. *In re Surety Bond for Costs, supra* at 331. Presuming such a "substantial reason" exists, however, the trial court "may allow a party to proceed without furnishing security for costs if the party's pleading states a legitimate claim and the party shows by affidavit that he or she is financially unable to furnish a security bond." MCR 2.109(C)(1).

There has never been any dispute in this case that plaintiff is indigent. The trial court expressly found that plaintiff had pleaded a viable claim, which is logically incompatible with a finding that the claim was illegitimate. Case evaluation was not unanimously adverse to

plaintiff. The trial judge, while being very careful to avoid credibility decisions, was of the opinion that there was a very thin basis for finding liability. By the same token, the judge also stated that there were sufficient issues of justiciable fact to preclude a grant of summary disposition. On this record, the requisite elements for proceeding without a security bond under MCR 2.109(C)(1) are present.

Even presuming the factual basis for plaintiff's case is as weak as the trial court opined, this Court has repeatedly held that it should be an exceedingly rare circumstance ““where a discreet trial court will require an indigent plaintiff, pleading a valid theory of liability, to post security.”” *In re Surety Bond for Costs, supra* at 333, quoting *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 272; 463 NW2d 254 (1990), quoting *Gaffier v St Johns Hosp*, 68 Mich App 474, 478; 243 NW2d 20 (1976). That would seem especially true where, as here, the bond requirement effectively terminated plaintiff's right to litigate its claim.

Further, by operation of law, defendants are not as tremendously burdened by the need to defend against plaintiff's complaint as their motion for security suggests. Personal liability insurance is mandatory for motorists in Michigan, and the record does not show that any of defendants were uninsured. Defendants would have been defended, at least in part, by an entity that has voluntarily assumed a calculated – and already compensated – risk of defending against this type of eventuality.

I am further troubled by the fact that the trial judge applied the same uniform bond requirement to each party defendant. If one assumes that the first driver collided with the deceased as a result of surprise and low visibility, how do these favorable assumptions (as to that defendant) benefit the next two drivers who successively ran over the decedent after the first driver activated his vehicular warning flashers and pulled over to the side of the road? The law may not require one to slow down in the presence of an apparent emergency on the highway, but a trier of fact could find that prudence would dictate that course of action. In other words, presuming weaknesses in this case, those weaknesses may not have been equal as to all defendants.

I believe that a bond requirement that terminated plaintiff's right to proceed with this cause of action was an abuse of discretion in this case for the reasons stated. I would reverse.

/s/ Alton T. Davis