

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Court of Appeals Gives Teeth to the Application of the Michigan Court Rules

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SECRET WARDLE NOTES

The Michigan Court Rules are not to be taken lightly—failure to respond to requests for admissions within twenty-eight days results in the requests being deemed admitted. While a party can seek relief for a failure to timely respond, the *Brooks-Wiley* opinion is yet another example of how a trial court's decision to dismiss a case for discovery violations and non-compliance with the Michigan Court Rules can be upheld on appeal.

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On March 17, 2015, the Michigan Court of Appeals released an unpublished opinion in the case of *Brooks-Wiley v Frankenmuth Mutual Insurance Company* (Docket No. 319286)—a case handled by Secret Wardle both at the trial court and on appeal. In this case, Plaintiff sought personal protection insurance benefits under the Michigan No Fault Act. The specific issue before the Court of Appeals was whether Plaintiff's case was appropriately dismissed by the trial court.

After Plaintiff filed her lawsuit, on March 6, 2013, Defendant Frankenmuth Mutual Insurance Company (FMIC) timely filed responsive pleadings and included request for admissions related to Plaintiff's purported injuries and claims. FMIC sought that Plaintiff admit that she was not claiming medical expenses, wage loss benefits, attendant care, medical mileage, replacement services, home modifications, and that she was not in need of further medical treatment.

Plaintiff failed to respond to FMIC's requests for admission; as a result, FMIC moved for summary disposition on August 2, 2013, seeking judgment in its favor pursuant to MCR 2.116(C)(10) as there was no genuine issue of material fact with regard to Plaintiff's admissions. More specifically, FMIC argued that under MCR 2.312(B)(1) Plaintiff admitted that she had no viable claim for first party no-fault benefits.

On August 20, 2013, only after receiving FMIC's motion for summary disposition, Plaintiff filed her untimely responses to requests for admission and denied each of FMIC's requests. Importantly, however, Plaintiff did not respond to FMIC's motion for summary disposition. Neither Plaintiff nor her counsel appeared for the hearing for the dispositive motion on August 30, 2013. Per Plaintiff, her attorney

erroneously believed that FMIC withdrew its motion for summary disposition after Plaintiff filed her late response to FMIC's request for admissions. On September 3, 2013, the trial court granted FMIC's motion for summary disposition on the basis of Plaintiff's deemed admissions. Plaintiff subsequently filed a motion for reconsideration and sought to withdraw her deemed admissions but her requests for relief were denied.

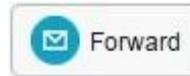
On appeal, the Court of Appeals affirmed the trial court's dismissal of the case. The *Brooks-Wiley* Court noted that under the Michigan Court Rules, at the time the trial court granted summary disposition in FMIC's favor, the requests were deemed admitted and thereby indicated that Plaintiff "had no existing claim for first-party no-fault benefits under Michigan law." Significantly, the Court also noted that nothing in the Michigan Court Rules *required* the trial court to allow Plaintiff to withdraw her deemed admissions.

In looking to whether Plaintiff established good cause under MCR 2.312(D)(1) or met the balancing test articulated in *Janczyk v Davis*, 125 Mich App 683 (1983), the Court of Appeals noted that, unlike the *Janczyk* case, Plaintiff never moved the trial court to allow late responses. In addition, Plaintiff did not establish good cause as she filed her responses nearly five-months after being served with such and in the case demonstrated an unwillingness to comply by, for example, not responding to the motion for summary disposition. The trial court did not plainly err or abuse its discretion according to the Court of Appeals. "Plaintiff's abject failure to comply with the court rules" warranted dismissal.

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