

STATE OF MICHIGAN  
COURT OF APPEALS

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JURLEAN RENFRO and FRANK RENFRO,

Plaintiffs-Appellants,

v

JOE RANDAZZO'S FRUIT & VEGETABLE  
MARKET,

Defendant-Appellee.

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UNPUBLISHED

June 12, 1998

No. 199001

Wayne Circuit Court

LC No. 96-614603 NI

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the trial court's order dismissing the complaint for failure to post a security bond ordered by the court. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Jurlean Renfro alleged that she was injured when defendant's cashier knocked a coconut off a checkout counter, fracturing her toe. Several months later, she fractured an ankle when she fell down some stairs after receiving treatment on her toe. Plaintiff claimed that these injuries resulted from defendant's negligence. Frank Renfro, her husband, alleged loss of consortium.

Defendant asserted that plaintiffs' complaint was frivolous, and moved for security for costs, pursuant to MCR 2.109(A). Plaintiffs claimed an exception under the indigency provision of MCR 2.109(C)(1), and on rehearing Jurlean Renfro supplied an affidavit of indigency. The trial court found that plaintiffs' claims were tenuous, and ordered plaintiffs to post a \$2,000 bond. When plaintiffs failed to post the bond, the court granted defendant's motion for dismissal without prejudice.

A security bond should not be required unless there is a substantial reason for doing so. *In re Surety Bond for Costs*, 226 Mich App 321, 331; \_\_\_ NW2d \_\_\_ (1997). A substantial reason may be found where there is a tenuous theory of liability or where there is good reason to believe that a party's allegations are groundless and unwarranted. *Id.*, 331-332. In determining the legitimacy of a claim, a trial court may consider the legal theory and the likelihood of success on the merits. *Hall v*

*Harmony Hills Recreation, Inc.*, 186 Mich App 265, 271; 463 NW2d 254 (1990). A finding that a claim lacks merit is reviewed for clear error. *Id.*

The trial court did not clearly err in finding that plaintiffs' claim was tenuous, and that security for costs was merited. Plaintiffs' claim for damages was far removed from the alleged injury. Where there was evidence that the injury was as likely caused by plaintiff's own negligence as that of defendant, the court did not clearly err in finding that causation was tenuous. The court did not abuse its discretion in ordering plaintiffs to post security for costs. *In re Surety Bond for Costs, supra.*

Affirmed.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage