

STATE OF MICHIGAN
COURT OF APPEALS

SHERRELL FRANKLIN,

Plaintiff-Appellee,

v

BLUE CROSS/BLUE SHIELD OF MICHIGAN,

Defendant-Appellant.

UNPUBLISHED

September 28, 1999

No. 207158

Wayne Circuit Court

LC No. 95-522267 CL

Before: Gribbs, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Defendant appeals the jury verdict for plaintiff in this action involving the Michigan Civil Rights Act (the act), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.* We reverse.

In the underlying action, it was plaintiff's theory that she was entitled to a reasonable time to heal under the persons with disabilities act. *Rymar v Michigan Bell Telephone Co*, 190 Mich App 504; 476 NW2d 451 (1991). The trial court relied on *Rymer* in allowing the case to go to the jury, instructed the jury in keeping with the analysis in *Rymer*, and denied defendant's motion for judgment notwithstanding the verdict on the same basis.

During the pendency of this appeal, a special panel of this Court resolved the conflict between *Rymer*, *supra*, and the vacated opinion in *Lamoria v Health Care & Retirement Corp*, 230 Mich App 801; 584 NW2d 589 (1998), and determined that the act does not require that an employer allow a disabled employee a reasonable time to heal. *Lamoria v Health Care & Retirement Corp.*, 233 Mich App 560; 593 NW2d 699 (1999). We now conclude that *Lamoria*, 233 Mich App 560, is to be given limited retroactive effect and that, because the sole basis for plaintiff's cause of action has been overruled, defendant is entitled to judgment in its favor.

Whether the decision in *Lamoria*, 233 Mich App 560, should be fully retroactive, have limited retroactive effect, or be given prospective application, is a question of law. *People v Sexton*, 458 Mich 43, 52; 580 NW2d 404 (1998). The general rule is that judicial decisions are to be given full retroactive effect. *Lindsey v Harper Hosp*, 455 Mich 56, 68; 564 NW2d 861 (1997). Limited retroactivity is the favored approach, however, when overruling prior law. *Jahner v Dep't of*

Corrections, 197 Mich App 111, 114; 495 NW2d 168 (1992). Prospective application is generally limited to decisions that overrule clear and uncontradicted case law. *Syntax Labs v Dep't of Treasury*, 233 Mich App 286, 292; 590 NW2d 612 (1998). Here, the “reasonable time to heal” doctrine was not so well settled as to preclude limited retroactive effect of the *Lamoria* decision. Although *Rymer* was decided several years ago, its reasoning had been questioned by the time plaintiff filed her lawsuit in this case. *Hatfield v St Mary's Med Cen*, 211 Mich App 321, 329; 535 NW2d 272 (1995). Because the issue of the “reasonable time to heal” doctrine was raised in the trial court and was pending in this Court when the decision in *Lamoria*, 233 Mich App 562, was issued, we find that the holding in *Lamoria*, 233 Mich App 562, applies in this case.

In light of our decision, we need not address plaintiff's remaining issues.

Reversed and remanded for entry of judgment for defendant.

/s/ Roman S. Gribbs

/s/ Michael R. Smolenski

/s/ Hilda R. Gage