

STATE OF MICHIGAN
COURT OF APPEALS

JOZA KHAMIS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

June 5, 2001

No. 223202

Oakland Circuit Court

LC No. 99-014757-NF

Before: Jansen, P.J., and Zahra and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). In this case, judgment was predicated on matters deemed admitted due to plaintiff's repeated failure to answer a request for admissions. MCR 2.312(B)(1). The trial court's ruling on plaintiff's motion to amend her answer to the request for admissions is reviewed for an abuse of discretion. *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991).

If a party fails to respond to a request for admissions in a timely manner, each matter as to which a request was made is deemed admitted. MCR 2.312(B)(1). A matter admitted "is conclusively established" unless the court on motion and for good cause shown permits withdrawal or amendment of an admission. MCR 2.312(D)(1). "[T]he admissions resulting from a failure to answer a request for admissions may form the basis for summary disposition." *Medbury, supra*. "However, the failure to properly answer the requests for admissions does not mean that the trial judge must automatically enter summary judgment even if (as here) the admissions cover the entire suit. The trial judge has the discretion to allow the party to file late answers or even to amend or withdraw the answers." *Janczyk v Davis*, 125 Mich App 683, 691; 337 NW2d 272 (1983).

Defendant served plaintiff's counsel with a request for admissions and counsel or someone in his office put it aside, lost it, and forgot about it. After defendant inquired about

forthcoming answers and plaintiff's counsel could not find the request, defendant faxed a new copy to his office. Again, counsel or someone in his office promptly lost it and forgot about it. About a month and one-half later, defendant canceled plaintiff's deposition because she had not responded to the request. Plaintiff's counsel did nothing until faced with summary disposition and then claimed never to have received the request. Based on the circumstances of the case, the trial court did not abuse its discretion in denying plaintiff's request to amend her answers. *Medbury, supra* at 557.

Affirmed.

/s/ Kathleen Jansen

/s/ Brian K. Zahra

/s/ Donald S. Owens