

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ELIZABETH FARLEY, Personal Representative  
of the Estate of FRANKLIN FARLEY,

Plaintiff-Appellee,

v

NEVINE M. CARP, JOHN SCHAIRER, D.O.,  
ADVANCED CARDIOVASCULAR HEALTH  
SPECIALISTS, P.C., and MIRCEA R. CARP,  
M.D.,

Defendants,

and

GARDEN CITY HOSPITAL OSTEOPATHIC,

Defendant-Appellant.

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ELIZABETH FARLEY, Personal Representative  
of the Estate of FRANKLIN FARLEY,

Plaintiff-Appellee,

v

NEVINE M. CARP, M.D., JOHN SCHAIRER,  
D.O., GARDEN CITY HOSPITAL  
OSTEOPATHIC, and MIRCEA R. CARP, M.D.,

Defendants,

and

ADVANCED CARDIOVASCULAR HEALTH  
SPECIALISTS, P.C.,

Defendant-Appellant.

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FOR PUBLICATION  
January 5, 2010

Nos. 283405 and 284681  
Wayne Circuit Court  
LC No. 02-237107-NH

No. 283418  
Wayne Circuit Court  
LC No. 02-237107-NH

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KIRT WREN, Personal Representative of the  
Estate of HIRAM DENT,

Plaintiff-Appellee,

v

SOUTHFIELD REHABILITATION COMPANY,  
d/b/a GREAT LAKES REHABILITATION  
HOSPITAL, and MOHAMMED S. SIDDIQUI,  
D.O.,

Defendants,

and

ST. JOHN RIVERVIEW HOSPITAL,

Defendant-Appellant.

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KIRT WREN, Personal Representative of the  
Estate of HIRAM DENT,

Plaintiff-Appellee,

v

SOUTHFIELD REHABILITATION COMPANY,  
d/b/a GREAT LAKES REHABILITATION  
HOSPITAL,

Defendant-Appellant,

and

ST. JOHN RIVERVIEW HOSPITAL and  
MOHAMMED S. SIDDIQUI, D.O.,

Defendants.

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No. 283726  
Wayne Circuit Court  
LC No. 04-425699-NH

No. 283727  
Wayne Circuit Court  
LC No. 04-425699-NH

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LABARON ELLIS and THOMAS J. EDMUNDS,  
Co-Personal Representatives of the Estate of  
SAUNDRA L. EDMUNDS,

Plaintiffs-Appellees,

v

HENRY FORD HEALTH SYSTEM, d/b/a  
HENRY FORD HOSPITAL, SACHIN GOEL,  
M.D., JOSEPH LEBEL, D.O., and JOHN  
FERRARA, M.D.,

Defendants-Appellants.

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No. 284319  
Wayne Circuit Court  
LC No. 04-426500-NH

Before: SAAD, P.J., and SAWYER and BORRELLO, JJ.

BORRELLO, J. (*dissenting*).

I respectfully dissent from the majority's opinion in these consolidated cases. While I agree with the majority that we are bound by MCR 7.215(J)(1) to follow *Kidder v Ptacin*, 284 Mich App 166; 771 NW2d 806 (2009), in *Wren* (Docket Nos. 283726 and 283727) and *Ellis* (Docket No. 284319), because I am of the opinion that *Kidder* was wrongly decided, I would declare a conflict under MCR 7.215(J)(2). Furthermore, I disagree with the majority that *Kidder* controls the outcome in *Farley* (Docket Nos. 283405, 284681, and 283418) because *Farley* is factually distinguishable from *Kidder*. Contrary to the result reached by the majority, I would conclude that the trial court did not abuse its discretion by reinstating plaintiff's case in *Farley*.

I believe that the majority's reliance on *Kidder* in *Farley* is misplaced because the facts in *Farley* are distinguishable from the facts in *Kidder*. MCR 2.612(C)(1)(f) authorizes relief from judgment for "[a]ny other reason justifying relief from the operation of the judgment." In *Kidder*, this Court ruled that MCR 2.612(C)(1)(f) was inapplicable because the plaintiff in that

case failed to appeal the judgment of this Court. *Kidder*, *supra* at 169, 171. In declining to apply MCR 2.612(C)(1)(f), this Court stated:

Just as “equity aids the vigilant, not those who sleep on their rights,” *Falk v State Bar of Michigan*, 411 Mich 63, 113 n 27; 305 NW2d 201 (1981) (RYAN, J., joined by MOODY and FITZGERALD, JJ.) (quotation marks and citations omitted), so does the appellate process. See *Lothian v Detroit*, 414 Mich 160, 175; 324 NW2d 9 (1982) (denying relief to an appellant who, “wholly apprised of the facts which constituted his cause of action, chose to sleep on his rights until a subsequent appellate court decision roused him to action”). . . . The interests of justice truly militate against allowing a defeated party’s action to spring back to life because others have availed themselves of the appellate process. [*Kidder*, *supra* at 171.]

As the majority notes, plaintiff in *Farley* did not sleep or sit on her appellate rights like the plaintiff in *Kidder*. To the contrary, plaintiff in *Farley* moved for reconsideration in this Court<sup>1</sup> and appealed this Court’s decision to the Supreme Court, which denied leave to appeal.<sup>2</sup> Because plaintiff availed herself of the appellate process in *Farley*, *Kidder*’s reasoning for declining to apply MCR 2.612(C)(1)(f) is inapplicable here, and the interests of justice do not militate against allowing plaintiff to pursue her case. Rather, the interests of justice dictate a contrary result from that reached by my colleagues in the majority. Based on my review of the proceedings in the trial court, any reliance on *Kidder* to reverse the trial court’s reinstatement of plaintiff’s case in *Farley* is improper and unjust.

Although plaintiff’s motion following the Supreme Court’s decision in *Mullins v St Joseph Mercy Hosp*, 480 Mich 948(2007), was technically a motion to lift a stay rather than a motion to reinstate the case, the trial court noted on the record that it had not imposed a stay and treated plaintiff’s motion as a motion to reinstate the case. “This Court reviews for abuse of

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<sup>1</sup> *Farley v Carp*, unpublished order of the Court of Appeals, entered July 22, 2005 (Docket Nos. 256776, 256799, and 257988).

<sup>2</sup> *Farley v Advanced Cardiovascular Health Specialists, PC*, 474 Mich 1020(2006).

discretion a trial court's decision concerning a motion to reinstate an action.'" *Kidder, supra* at 170, quoting *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 138; 624 NW2d 197 (2000). The abuse of discretion standard recognizes "'that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.'" *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Unlike the majority, I would conclude that the trial court's reinstatement of plaintiff's case in *Farley* was not an abuse of discretion. Given the trial court's authority to relieve a party from a judgment under MCR 2.612(C)(1)(f) and the fact that plaintiff in *Farley* availed herself of the appellate process, I would conclude that *Kidder* is distinguishable and hold that the trial court's reinstatement of plaintiff's case in *Farley* did not fall outside the principled range of outcomes.

/s/ Stephen L. Borrello