

STATE OF MICHIGAN
COURT OF APPEALS

PHYLLIS OLIVER,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

June 14, 2016

No. 326678

Wayne Circuit Court

LC No. 14-001634-NF

Before: JANSEN, P.J., and O'CONNELL and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right the order dismissing her complaint with prejudice for failure to post a bond for security for costs. We affirm.

Plaintiff argues that the trial court abused its discretion when it required her to post a bond for security for costs. We disagree.

This case arises from a complaint for no-fault benefits following an alleged hit-and-run motor vehicle accident. Defendant filed a motion for security for costs. Defendant argued that it obtained evidence indicating that the accident did not involve another motor vehicle, contrary to plaintiff's claim that the accident was a hit-and-run accident. Defendant argued in its motion that plaintiff did not develop any new injuries because of the accident, and, contrary to plaintiff's representations, the evidence indicated that plaintiff did not require household services because of the accident. Plaintiff did not file a response to the motion until after the court held a hearing on the motion. The court granted the motion for security for costs for the reasons argued by defendant. Plaintiff did not post the bond within the allotted timeframe, and defendant filed a motion to dismiss. Plaintiff did not respond to the motion to dismiss, and her attorney did not contest the motion at the hearing. The trial court entered an order dismissing the case.

We review a trial court's decision to require a security bond for an abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). "An abuse of discretion occurs when the court's decision results in an outcome that falls outside the range of principled outcomes." *Epps v 4 Quarters Restoration*, 498 Mich 518, 528; 872 NW2d 412 (2015).

MCR 2.109(A) provides:

On motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court, or, if the claiming party appeals, by the trial and appellate courts. The court shall determine the amount in its discretion. MCR 3.604(E) and (F) govern objections to the surety.

There must be a substantial reason for imposing security. *Surety Bond for Costs*, 226 Mich App at 331. “A ‘substantial reason’ for requiring security may exist where there is a ‘tenuous legal theory of liability,’ or where there is good reason to believe that a party’s allegations are ‘groundless and unwarranted.’ ” *Id.* at 331-332 (citation omitted). A court may dismiss the party’s claims if the party does not file the security bond as ordered by the court. *Id.* at 332.

The trial court did not err in imposing a bond for security for costs because the court had good reason to believe that plaintiff’s allegations were groundless and unwarranted. Plaintiff argues that there was insufficient evidence to support the imposition of a bond on her and that the court improperly based its decision on the evidence justifying the imposition of a bond on coplaintiff Antoinette May. However, there was ample evidence in the record supporting a finding that plaintiff’s allegations were groundless and unwarranted independent of the evidence regarding May.

First, there was evidence that another motor vehicle was not involved in the accident, contrary to plaintiff’s testimony that the incident involved a hit-and-run vehicle. Defendant presented an engineering analysis and report, which concluded that the accident did not involve another motor vehicle. The report indicated that the type of car associated with the license plate of the alleged hit-and-run vehicle was a GMC Jimmy, rather than a Cadillac or a large sedan as reported by plaintiff. According to the report, another motor vehicle could not have caused the puncture or scratches on May’s car reportedly caused by the accident. Furthermore, the scratches did not appear in the initial photographs of the car taken after the accident, suggesting that the car was scratched after the incident and inspection. The supplemental engineering report concluded that plaintiff’s “collision scenario is not possible and is inconsistent with the physical evidence.” Thus, there was evidence that plaintiff’s testimony regarding the fact that the accident involved a hit-and-run driver was false. Plaintiff points out that the traffic crash report indicates that there was damage to the car and that plaintiff had a non-incapacitating injury. Plaintiff was taken to the hospital following the incident, where she was examined and given pain medication. However, defendant does not contend that there was no accident or that the car was not damaged in any way. Instead, the evidence indicates that the accident did not occur in the manner described by plaintiff and suggests that plaintiff and May falsely attributed the damage to a hit-and-run driver.

Second, plaintiff had ongoing medical issues before the accident, which included back and joint pain. According to plaintiff, the incident increased her back pain and caused a significant change in her health. However, plaintiff’s medical records show that she reported experiencing back pain before the incident. Plaintiff also testified that the accident worsened her

osteoporosis and osteoarthritis, and it increased her depression. Plaintiff walked with a cane before the accident, but reported using it more after the accident. Thus, the accident did not cause plaintiff to suffer any additional injuries, though plaintiff contended that it exacerbated her existing injuries. There is a serious question regarding whether plaintiff suffered a significant change in her health because of the accident considering the low severity of the accident and the very minor damage to the car. The fact that plaintiff did not manifest any distinct symptoms after the accident, in connection with the other evidence that plaintiff's claims were false, provided additional support for the trial court's decision.

In addition, the evidence also showed that plaintiff did not require services because of the accident, contrary to her claim that she required services. According to La'Mon Oliver, plaintiff's son, plaintiff did all the chores in the house before she became ill with sarcoidosis. La'Mon explained that his girlfriend, Nicole Jones, did all the household chores after plaintiff became ill. Plaintiff also testified that she required assistance with yard work, shoveling snow, and some housework before the accident. In contrast, Tameka Slater, plaintiff's friend, testified that she began doing chores for plaintiff after the accident, and she helped plaintiff every day with chores. According to Slater, plaintiff did all the chores before the accident. Her testimony contradicted the testimony of La'Mon that plaintiff required assistance before the incident and that La'Mon's girlfriend did all the chores in the house. Additionally, Slater testified that she usually helped plaintiff for one to two hours each day, while plaintiff filled out an affidavit for services rendered stating that Slater worked for four hours each day. This contradiction further indicates that plaintiff's claims were false. The evidence indicates that plaintiff made false claims regarding what occurred during the accident, the extent of her injuries, and her need for services. The trial court, therefore, properly imposed a bond in order to protect defendant from incurring costs in litigating a potentially fraudulent claim.

Plaintiff raises several specific challenges to the trial court's decision. Plaintiff argues that the trial court should have denied the motion for security for costs because it was untimely. This issue is unpreserved because plaintiff raises it for the first time on appeal. See *Mouzon v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014). However, we may review an unpreserved issue for plain error if “ ‘the issue involves a question of law and the facts necessary for its resolution have been presented.’ ” *D'Alessandro Contracting Group, LLC v Wright*, 308 Mich App 71, 77; 862 NW2d 466 (2014) (citation omitted). We note that MCR 2.109 does not contain a timeliness requirement. This Court has held that, in general, “ ‘an application for security should be made as early as practicable,’ e.g., ‘with or soon after [the] answer.’ ” *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 269; 463 NW2d 254 (1990) (citation omitted; alteration in original). Defendant filed the motion for security for costs only approximately five months after the engineering report was written and three months after the supplemental engineering report analyzing plaintiff's testimony was written. Defendant did not have evidence in its possession that plaintiff's claims were false at the time that it filed its answer. Instead, defendant learned that the evidence indicated that plaintiff's claims were false during discovery, and defendant filed the motion for security for costs only three months after receiving information from the supplemental engineering report that plaintiff's claims regarding the accident were untrue. Therefore, we conclude that plaintiff's argument on this issue fails.

Finally, plaintiff argues that the court abused its discretion in granting the motion because she was not financially able to post the bond. This issue is unpreserved because plaintiff did not

raise the issue in the trial court. See *Mouzon*, 308 Mich App at 419. Plaintiff did not present an affidavit showing financial inability to furnish a security bond, as required by court rule. See MCR 2.109(B). Therefore, we decline to address this unpreserved issue. However, we note that the trial court imposed a \$2,500 bond on plaintiff, which was ¼ of the \$10,000 bond defendant requested. Thus, the trial court exercised its discretion in favor of plaintiff. Accordingly, the trial court did not abuse its discretion in imposing the bond for security for costs, and the court properly exercised its discretion in dismissing the complaint when plaintiff failed to post the bond.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Riordan