

STATE OF MICHIGAN
COURT OF APPEALS

OLIVIA BOITOS, as Next Friend of JORDYN
BOITOS, a Minor,

UNPUBLISHED
July 7, 2011

Plaintiff-Appellant,

v

DYNAMIC VISUAL PRODUCTIONS INC,
SYNCOATED INC, d/b/a BRAVO NATIONAL
DANCE & TALENT COMPETITION, and
CHAD EDWARDS,

No. 297420
Oakland Circuit Court
LC No. 08-094338-NO

Defendants-Appellees.

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

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants¹ pursuant to MCR 2.116(C)(10). The trial court granted defendants' motion for summary disposition after determining that defendants owed no duty to plaintiff in light of *Fultz v Union-Commerce Assoc*, 470 Mich 460; 683 NW2d 587 (2004), and its progeny. Since the trial court granted defendant's motion, our Supreme Court issued its opinion in *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, ___ Mich ___; ___ NW2d ___ (2011) (Docket No. 141168, issued June 6, 2011), which clarifies its analysis in *Fultz*. Because neither the parties nor the trial court had the opportunity to consider our Supreme Court's decision in *Loweke* in arguing and deciding this matter, we vacate the trial court's order and remand for reconsideration in light of *Loweke*'s clarification of *Fultz*. On remand, the trial court has broad discretion to require additional briefing, documentation or oral argument, as it deems necessary.

¹ The order granting defendants' motion for summary disposition was entered in favor of defendants Dynamic Visual Productions Inc. and Chad Edwards. Defendant Syncopated Inc., d/b/a Bravo National Dance & Talent Competition, was dismissed from the case by stipulation of the parties and is not a party to this appeal.

On appeal, the parties have raised arguments not related to the *Fultz* issue. In light of our decision to remand for reconsideration in light of *Fultz*, we do not address or decide those arguments.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Neither party having prevailed in full, no costs are awarded under MCR 7.219.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Henry William Saad