

STATE OF MICHIGAN  
COURT OF APPEALS

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KERSTIN COLE,

Plaintiff-Appellant,

v

STATE FARM AUTOMOBILE INSURANCE  
COMPANY,

Defendant-Appellee.

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UNPUBLISHED  
March 27, 2012

No. 301947  
Kent Circuit Court  
LC No. 09-009908-NF

Before: METER, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Plaintiff Kerstin Cole was insured by defendant and was injured in an automobile accident on March 12, 2008. Defendant ceased paying plaintiff's personal protection insurance benefits in January 2009 after an independent medical examination, leading to the case at bar. The trial court granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) and plaintiff appeals by right. We affirm.

During discovery, defendant served plaintiff with a request for admissions; plaintiff failed to respond to defendant's request within the 28-day time period mandated by MCR 2.312(B)(1).<sup>1</sup> As a consequence, the requested matters were deemed admitted. *Id.* Plaintiff moved the trial court for leave to withdraw her admissions, but the trial court denied her motion. The trial court subsequently granted summary disposition in favor of defendant because the matters admitted established that plaintiff had no cause of action against defendant.

On appeal, plaintiff contends that the trial court abused its discretion by refusing to permit her to withdraw her admissions. Pursuant to MCR 2.312(A), a party may serve upon another party a written request for an admission of truth of a matter with the scope of discovery. In general, after being served with a request for admissions, a party has 28 days to respond to the request. MCR 2.312(B)(1). If a party fails to file a timely response, each matter in the request is deemed admitted. *Id.*; *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991). Once

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<sup>1</sup> Plaintiff's response to defendant's request for admissions was nearly eight months late.

admitted, the matter is “conclusively established unless the court on motion permits withdrawal or amendment of an admission.” MCR 2.312(D)(1).

The trial court may, upon a showing of good cause, permit a party to amend or withdraw an admission. MCR 2.312(D)(1). In evaluating the trial court’s decision regarding a party’s request to withdraw or amend admissions, we look to three factors. *Janczyk v Davis*, 125 Mich App 683, 692; 337 NW2d 272 (1983). The first factor is whether allowing a party to file a late answer will aid the presentation of the action, i.e., whether “refusing the request will eliminate the trial on the merits.” *Id.* The second factor is whether the party who requested the admissions would be prejudiced in the presentation of its case by allowing a late response. *Id.*, n 5. Finally, the third factor addresses the reason for the delay: was the failure to answer the request for admissions inadvertent or intentional? *Id.* at 692-693. We review for an abuse of discretion the trial court’s decision regarding whether to allow a party to amend or withdraw her admissions. *Medbury*, 190 Mich App at 556. “A trial court abuses its discretion when it selects an outcome that falls outside the range of principled outcomes.” *Bailey v Schaff*, \_\_ Mich App \_\_; \_\_ NW2d\_\_ (2011), slip op at 4.

In this case, the trial court did not apply the *Janczyk* factors in denying plaintiff’s motion to withdraw her admissions. But we do not find that the trial court’s failure to do so was an abuse of discretion because the trial court found that good cause did not exist for permitting plaintiff to withdraw her admissions. See MCR 2.312(D)(1) (“For good cause the court may allow a party to amend or withdraw an admission.”). Moreover, after applying the *Janczyk* factors, we conclude that the trial court’s decision was not an abuse of discretion.

In applying the *Janczyk* factors to the case at bar, we find that the first factor, i.e., whether allowing plaintiff to withdraw her admissions would have aided in the presentation of the case, favors plaintiff’s position. The second factor, whether defendant would be prejudiced by permitting plaintiff to withdraw her admissions, also favors plaintiff. In the case at bar, defendant would not have been prejudiced if plaintiff were permitted to withdraw her admissions because nearly seven months of discovery remained, and seven months would have been ample time for defendant to respond to plaintiff’s amended admissions. See *Bailey*, slip op at 6 (where a party has ample time to respond to amended admissions, it is not prejudiced by the trial court’s decision to allow the amended admissions).

However, while the first two factors weigh in plaintiff’s favor, we find that the third *Janczyk* factor weighs in favor of upholding the trial court’s decision. This factor focuses on whether the delay in responding to a request for admissions was intentional or inadvertent. We first note that at least part of plaintiff’s eight-month delay was inadvertent and was attributable to trial counsel’s inability to communicate with plaintiff. Indeed, plaintiff’s trial counsel was unable to locate plaintiff at various times during the litigation. Nevertheless, while plaintiff’s trial counsel had difficulty communicating with plaintiff earlier in the proceedings, the record demonstrates that plaintiff communicated with her counsel at least five months before she filed her untimely responses. The record contains no indication as to why plaintiff did not attempt to file a response at this time. Moreover, we note that plaintiff’s trial counsel could have requested more time to respond to defendant’s request for admissions under MCR 2.312(B)(1) when he could not locate her, but that he did not do so. Thus, we will not conclude that the bulk of the delay was inadvertent. Plaintiff and her trial counsel could have taken steps to avoid the result in

this case. Accordingly, we find that the trial court’s decision to deny plaintiff’s request for relief was within “the range of principled outcomes.” *Bailey*, slip op at 4. In ruling, we look to *Medbury*, 190 Mich App at 557, where this Court held that the trial court did not abuse its discretion when it refused to permit a party to withdraw his admissions; the delay in responding in that case was four months long. Here, plaintiff’s delay was twice as long as the delay in *Medbury*, as she waited nearly eight months to respond to defendant’s request. Given the length of the delay that cannot be explained as mere inadvertence, we find that the trial court’s decision that the requisite “good cause” for granting relief was lacking falls within the principled range of outcomes. *Bailey*, slip op at 4. Thus, the trial court did not abuse its discretion. *Id.* And it follows that the trial court did not err in granting defendant summary disposition. *Medbury*, 190 Mich App at 556-557.

We affirm.

/s/ Patrick M. Meter  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey