STATE OF MICHIGAN

COURT OF APPEALS

COMMUNICARE MICHIGAN, LLC Plaintiff-Appellant,	UNPUBLISHED November 24, 2015
v	No. 323502 Oakland Circuit Court
AUTOMOBILE CLUB INSURANCE ASSOCIATION, Defendant-Appellee,	LC No. 2013-134759-NF
and	
STATE FARM MUTUAL AUTOMOBILE INSURANCE, Defendant.	

Before: SHAPIRO, P.J., and O'CONNELL and GLEICHER, JJ.

PER CURIAM.

Plaintiff Communicare Michigan, LLC appeals from the trial court's grant of summary disposition. We reverse and remand for further proceedings.

Lori Rodebush allegedly suffered a traumatic brain injury in an automobile accident on March 8, 2012. On June 25, 2012, she was admitted to a neuro-rehabilitation program operated by Communicare. The billings for the services she received totaled approximately $400,000. Communicare submitted the billings to defendant Automobile Club Insurance Association (ACIA), the relevant no-fault insurer. ACIA refused payment; the record does not indicate the basis for the denial.

Communicare filed suit against ACIA on October 1, 2013.[1] In its answer to the complaint, ACIA admitted that it was Rodebush's no-fault insurer on the date of the accident.

[1] On June 27, 2013, Communicare initially filed suit against State Farm Mutual Automobile Insurance Company. By stipulation, Communicare dismissed State Farm from the action and amended its complaint to add the ACIA, the correct defendant.

The parties do not dispute that Rodebush's policy with ACIA provided for coordinated medical benefits. Accordingly, the medical bills were initially submitted to the health insurer under which she was covered.

On April 1, 2014, ACIA served requests for admission on Communicare. It sought admission (1) that Rodebush was covered by a health insurance policy that was primary to any no-fault policy and (2) that ACIA was not the highest no-fault insurer in priority. ACIA also requested a copy of the summary plan description for the applicable health insurance policy.

On May 19, 2014,[2] ACIA filed a motion for summary disposition arguing that because Communicare failed to timely respond to the requests for admission, the proposed admissions should be deemed admitted pursuant to MCR 2.312(B)(1), and that because the requested admissions established that ACIA was not the highest priority no-fault insurer Communicare's case should be dismissed.

On July 7, 2013, Communicare submitted its response to the requests for admission as well as its brief opposing the motion for summary disposition. The response stated (1) that Rodebush had health insurance and that the health insurer had denied coverage on the grounds that the relevant services, e.g. residential placement, were not covered by its policy and (2) that there was no other no-fault policy in higher priority than ACIA's. In response to the request for production of the relevant health plan summary, Communicare stated that it did not have a copy of the summary plan description for the applicable health policy.

At the motion hearing on July 23, 2014, Communicare's counsel asked the trial court to extend the response time to July 7, 2014, an extension that would make his client's response to the requests timely. Counsel also advised the court that he had learned that the relevant health insurance plan was an ERISA plan containing its own provision stating that it was secondary to no-fault insurance. It is well-settled that in a dispute over priority between an ERISA plan and the no-fault insurer, the ERISA plan would prevail, assuming that there was a suitable coordination of benefits clause in the ERISA plan's charter. *Auto Club Ins Ass'n v Frederick & Herrud, Inc (After Remand)*, 443 Mich 358, 387, 505 NW2d 820 (1993). The trial court denied the motion, deemed the matters admitted, and granted summary disposition to ACIA.[3]

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[2] On the same day, ACIA also filed a motion for partial summary disposition, seeking to limit Communicare's claim based on the one-year-back rule contained in MCL 500.3145. The trial court did not rule on this motion and we do not address it.

[3] A trial court's decision to permit a party to withdraw or amend its admissions or to file late responses to a request for admissions is reviewed for an abuse of discretion. *Bailey v Schaaf*, 293 Mich App 611, 620; 810 NW2d 641 (2011), vacated in part on other grounds 494 Mich 595 (2013). "A trial court abuses its discretion when it selects an outcome that falls outside the range of principled outcomes." *Id*.

MCR 2.312(A) permits a party to serve another party with "a written request for the admission of the truth of a matter within the scope of MCR 2.302(B) stated in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of documents described in the request." MCR 2.312(B)(1) provides in pertinent part:

> (1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter.

However, MCR 2.312(D)(1) provides that:

> (1) A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission. The court may condition amendment or withdrawal of the admission on terms that are just.

Further, in *Janczyk v Davis*, 125 Mich App 683, 692-693; 337 NW2d 272 (1983), we held that a trial judge must balance three factors in determining whether to allow a party to file late answers to a request for admissions:

> First, whether or not allowing the party to answer late will aid in the presentation of the action. In other words, the trial judge should consider whether or not refusing the request will eliminate the trial on the merits. Obviously, this factor militates against granting summary judgment. Second, the trial court should consider whether or not the other party would be prejudiced if it allowed a late answer. Third, the trial court should consider the reason for the delay: whether or not the delay was inadvertent. [Citations and quotations marks omitted.][4]

In this case, the first *Janczyk* factor clearly weighs in Communicare's favor. Here, the requested admissions are not discrete facts that have relevance to the ultimate determination at trial. Rather, they wholly dispense of the case; they are essentially requests for dispositive conclusions of law. Thus, refusal to allow the late answers effectively eliminates any chance of a trial on the merits. Accordingly, the presentation of the action is better served by allowing late answers to the admission, so "this factor militates against granting summary [disposition]." *Id*. at 692.

The second *Janczyk* factor asks whether the requesting party would be prejudiced in proving its case if the court allowed a late answer. *Id*. at 692 n 5. Here we find no prejudice. ACIA is in no way prevented from obtaining and offering proofs that Rodebush's health

[4] Although *Janczyk* was decided under GCR 1963, 312.2, rather than MCR 2.312(D)(1), application of the *Janczyk* factors is still proper given that the "good cause" standard remains the same.

insurance is not an ERISA plan nor that there is other applicable no-fault insurance. Moreover, trial was not set to begin until six months after the date of dismissal. Thus, this factor also weighs in favor of permitting Communicare to file a late answer.

Finally, the third *Janczyk* factor directs "the trial court [to] consider the reason for the delay: whether or not the delay was inadvertent." *Id*. at 692-693. At the summary disposition stage of the proceedings, Communicare did not specify the reason for the delay. In its motion for reconsideration, Communicare stated that the delay "was the result of a clerical error," which suggests that it was inadvertent. Most compelling, however, is the fact that Communicare gains absolutely nothing by withholding facts that would, at least on their face, decide the case *in its favor*. As such, there is no basis to suggest that delay in answering the request was an intentional delay rather than inadvertent error. Thus, this factor also weighs in Communicare's favor.

"When a trial judge is asked to decide whether or not to allow a party to file late answers to the request for admissions, he is in effect called upon to balance between the interests of justice and diligence in litigation." *Id*. at 691. In this case, following the *Janczyk* factors, this balance clearly weighs heavily in favor of a trial on the merits. As noted in *Shawl v Spence Brothers Inc*, 280 Mich App 213, 239; 760 NW2d 674 (2009) (O'CONNELL, J. concurring), "the Michigan Court Rules are not a procedural tightrope upon which a litigant must balance carefully and perfectly or be thrown out of court." (quotation omitted). Disposition of claims on their merits is preferred. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999). "Litigants who purposefully and repeatedly act outside the scope of, or fail to follow clear and concise, rules deserve special and prompt attention from the court." *Shawl*, 280 Mich App at 240 (O'CONNELL, J. concurring). However, procedure should not always prevail over substance and the merits of a claim should not always be "left in the wake created by the procedural rules." *Id*. at 241-242. Accordingly, we conclude the trial court abused its discretion in denying Communicare's request to file late answers and instead deeming the requests admitted.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher