

# Order

Michigan Supreme Court  
Lansing, Michigan

March 18, 2022

Bridget M. McCormack,  
Chief Justice

163602

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

RICKIE D. OUSLEY, as Personal  
Representative of the ESTATE OF OSCAR  
OUSLEY,

Plaintiff-Appellant,

v

SC: 163602  
COA: 351378  
Jackson CC: 18-001246-NI

PHELPS TOWING, INC.,  
Defendant-Appellee.

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On order of the Court, the application for leave to appeal the August 26, 2021 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals. The Jackson Circuit Court erred by granting the defendant's motion for summary disposition under MCR 2.116(C)(10) before the close of discovery because the driver of the tow truck had not yet been deposed. Therefore, under the facts of this case, there remains a " 'fair likelihood that further discovery will yield support for the nonmoving party's position.' " *Kern v Kern-Koskela*, 320 Mich App 212, 227 (2017), quoting *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 33-34 (2009). We REMAND this case to the Jackson Circuit Court for entry of an order denying the defendant's motion for summary disposition and for further proceedings not inconsistent with this order.



s0315

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 18, 2022

Clerk