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STATE OF MICHIGAN

COURT OF APPEALS

JONATHAN JONES,

Plaintiff-Appellant,

v

HOME-OWNERS INSURANCE COMPANY and HARTFORD ACCIDENT & INDEMNITY COMPANY,

Defendants-Appellees,

and

AMERICAN COUNTRY INSURANCE COMPANY, and SHARNETA HENDERSON,

Defendants.

UNPUBLISHED
January 05, 2026
11:05 AM

No. 371220
Wayne Circuit Court
LC No. 18-009868-NI

Before: SWARTZLE, P.J., and O'BRIEN and BAZZI, JJ.

PER CURIAM.

Plaintiff was involved in an automobile accident and sued defendants Home-Owners Insurance Company ("Home-Owners") and Hartford Accident and Indemnity Company ("Hartford") for no-fault personal protection insurance (PIP) benefits and uninsured or underinsured motorist benefits. After this Court reversed the trial court's order dismissing plaintiff's claims for PIP benefits and remanded the case to the trial court, defendants moved for an order requiring a security bond from plaintiff. Plaintiff responded to the motion, arguing that the security bond would not be reasonable and proper. After a hearing on the motion, the trial court ordered the security bond in the requested amount of $25,000 and the case was dismissed when plaintiff failed to post the security bond. Plaintiff then moved for the trial court to reconsider the order requiring the security bond because plaintiff was financially unable to pay the amount. The trial court denied plaintiff's motion for reconsideration and this appeal was filed. Because the

trial court did not abuse its discretion in requiring the security bond and denying plaintiff's motion for reconsideration, we affirm.

I. BACKGROUND

> This case and its factual history has been examined by this Court before:
> This case arises from a motor vehicle accident on October 28, 2017, in which plaintiff's vehicle was struck by a vehicle driven by defendant Sharneta Henderson in Detroit. Plaintiff alleges that he was operating a 2009 Ford Crown Victoria and was stopped at a red light when Henderson's vehicle, traveling at a high rate of speed, drove through a red light and struck his vehicle. The Crown Victoria was insured under a no-fault policy issued by [American Country Insurance Company], which listed Sons of Alice Transportation, LLC (Sons of Alice), as the named insured. Plaintiff also alleged that he was covered under policies issued by Home-Owners and Hartford. The Home-Owners policy was for plaintiff's personal vehicle, a 2008 Mercedes, and listed plaintiff as the named insured. The Hartford policy was for a 1994 Chevrolet pickup truck and listed Jonathan Jones, d/b/a Jones Landscaping, as the named insured.
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> Plaintiff filed this action against all three insurers for recovery of no-fault PIP benefits and also uninsured or underinsured motorist benefits. All three insurers filed motions for summary disposition, asserting that plaintiff's claims were barred by antifraud provisions in the respective policies. Defendants argued that in plaintiff's deposition on December 18, 2018, plaintiff made material misrepresentations regarding his physical limitations, the extent to which he required attendant care and household replacement services, and the impact of his injuries on his ability to work. In support of their allegations of fraud, defendants relied on surveillance evidence from February, June, and July of 2018, which contradicted plaintiff's statements regarding the scope of his injuries and pain, his physical limitations, and his inability to work. [*Jones v Home-Owners Ins Co*, unpublished opinion of the Court of Appeals, issued August 18, 2022 (Docket No. 355118), p 2.]

The trial court granted defendants' motions for summary disposition, finding that there was no genuine issue of material fact that plaintiff committed fraud and that defendants were entitled to summary disposition on the basis of the antifraud provisions in the policies.

Plaintiff then appealed the trial court's decision granting summary disposition. This Court affirmed the trial court's order with respect to plaintiff's claim for uninsured or underinsured motorist benefits because "there [was] no genuine issue of material fact that plaintiff made material misrepresentations regarding his physical limitations, including his ability to conduct his daily activities of living, that were established by the surveillance evidence to be factually incorrect and untruthful." *Id.* at 8 (cleaned up). But, for summary disposition on the PIP benefits claim, this Court reversed the trial court's decision because defendants had failed to address any statutory right to PIP benefits in their motions for summary disposition and remanded for "a determination of the priority of the potential insurers, whether plaintiff is entitled to benefits under a policy, and whether the benefits arise by statute or contract." *Id.* at 4 (cleaned up).

Back in the trial court on remand, Home-Owners moved for security for costs, asking that the trial court require plaintiff to post a bond as security for costs in the amount of $25,000 and if plaintiff failed to file the bond, then to dismiss the case with prejudice. Citing MCR 2.109(A), Home-Owners argued that despite summary disposition not being an option, security for costs is appropriate because plaintiff's claims were meritless, unwarranted, and rested on a tenuous theory of legal liability because of plaintiff's fraud relative to his medical treatment, based on a doctor's deposition that he never treated plaintiff and the surveillance of plaintiff. The $25,000 amount was based on the "amount of discovery yet to be conducted and potential trial to be had," requiring review of medical records and depositions of medical professional and service providers. Hartford concurred and joined Home-Owners' motion. Home-Owners also filed a motion for attorney fees under MCL 500.3148(2) because of plaintiff's fraudulent claims.

Plaintiff responded to defendants' motion for security costs by arguing that, as he explained in his response to defendants' motions for attorney fees, "there is no realm of possibility where Plaintiff could be liable pursuant to MCL 500.3148(2), as no particular PIP claim has been shown to be premised on fraud and even the evidence on which those allegations are based is inadmissible." Further, plaintiff argued that "there has never been any allegation that Plaintiff's significant medical claims are somehow fraudulent or that they are otherwise not payable for any reason, meaning any possible sanctions could simply be set off from Plaintiff's award for allowable expenses." Nowhere in plaintiff's response did he mention any financial inability to pay a bond.

After a hearing on defendants' motion for security costs where parties made similar arguments to their briefs, the trial court granted defendants' request for plaintiff to post a bond of $25,000 within 14 days; if no such bond was posted, then the trial court would dismiss plaintiff's case without prejudice.[1] Once more than 14 days had passed and without the bond posted and no other requests by plaintiff, the trial court dismissed plaintiff's case without prejudice. Plaintiff then moved for reconsideration of the order requiring a security bond because of his financial inability to post any bond. The trial court denied plaintiff's motion for reconsideration because plaintiff failed to raise the argument of his financial inability in opposition to defendants' motion, did not provide an affidavit of financial inability until over a month after the order, and offered no explanation for his delay in submitting an affidavit. Plaintiff then appealed.

II. ANALYSIS

Plaintiff argues on appeal that the trial court abused its discretion by ordering a security bond. "It is within a trial court's discretion to order security, and we will not reverse unless the imposition of security is an abuse of that discretion." *Farleigh v Amalgamated Transit Union, Local 1251*, 199 Mich App 631, 633-634; 502 NW2d 371 (1993). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Nowacki v Dept of Corrections*, 319 Mich App 144, 148; 900 NW2d 154 (2017). "A trial court's

[1] At the motion hearing, after the trial court announced that defendants' motion for a security bond would be granted, defendant then asked about scheduling a hearing about the motion for attorney fees under MCL 500.3148. Plaintiff's counsel interjected and stated that plaintiff did not have the money to post the bond and the case would be appealed or dismissed.

determinations regarding the legitimacy of the claims and a party's financial ability to post a bond are findings of fact that are reviewed only for clear error." *In re Surety Bond for Costs*, 226 Mich App 321, 333; 573 NW2d 300 (1997). Clear error occurs if the Court is "left with the definite and firm conviction that a mistake has been committed." *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App 202, 214; 707 NW2d 353 (2005).

MCR 2.109 provides the following for "Security for Costs":

> (A) Motion. 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.

First, the trial court determines whether a security bond is reasonable and proper; then, the trial court sets the bond at an amount sufficient to cover all costs and other recoverable expenses that may be awarded. See MCR 2.109. If the security bond is not filed as ordered, then the trial court may properly dismiss the party's claim. *In re Surety Bond*, 226 Mich App at 332.

A. REASONABLE AND PROPER

Plaintiff argues that it was not reasonable and proper to require a security bond based on alleged fraudulent records and plaintiff's physical limitations. Security should be required if there is a substantial reason for doing so, such as a "tenuous legal theory of liability" or "where there is good reason to believe that a party's allegations, although they cannot be summarily dismissed under MCR 2.116, are nonetheless groundless and unwarranted." *Wells v Fruehauf Corp*, 170 Mich App 326, 335; 428 NW2d 1 (1988). The trial court may consider plaintiff's legal theories and the likelihood of success on these theories. *In re Surety Bond*, 226 Mich App at 334.

The trial court did not abuse its discretion when it ordered a security bond because it had a good reason to believe that plaintiff's claims under the no-fault act were groundless or unwarranted. An "allowable expense" under the no-fault act is a legitimate claim and "must be related to the insured's injuries." *ZCD Transp, Inc v State Farm Mut Auto Ins Co*, 299 Mich App 336, 340-341; 830 NW2d 428 (2012); MCL 500.3107(1)(a). Plaintiff must prove that (1) the expense is causally connected to the accident, (2) the expense was reasonably necessary, (3) the expense was for the care of the injured plaintiff, (4) the expense amount was reasonable, and (5) the expense was actually incurred. See *ZCD Transp*, 299 Mich App at 341-342. Plaintiff's arguments mostly focus on whether his actions and statements constituted fraud. Although this may be relevant, defendants are instead using the evidence to attack the underlying claims, i.e., arguing that the expenses were not connected to the accident, were not reasonable, were not for the care of injured plaintiff, or were not incurred because, based on surveillance, plaintiff was not actually injured.

Plaintiff then argues that the trial court impermissibly considered inadmissible surveillance evidence. The Court does not need to determine the admissibility of the surveillance evidence to

evaluate the trial court's decision of a security bond. Typically, motions for security bonds happen early in the litigation process when evidence has just come to light and its admissibility for a trial may not have yet been determined. See *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 269; 463 NW2d 254 (1990). Further, nothing in the rule dictates what the trial court may consider when finding a good reason to believe that plaintiff's claims are groundless or unwarranted. The trial court is not required to conduct an evidentiary hearing to set a security bond. *Dunn v Emergency Physicians Med Group, PC*, 189 Mich App 519, 523; 473 NW2d 762 (1991). Also, the trial court may "set the bond in light of [her] own experience." *Belfiori v Allis-Chalmers, Inc*, 107 Mich App 595, 601; 309 NW2d 682 (1981). "Because the trial judge is permitted to set the amount of the bond in light of [her] own experience, any proceeding to give the parties an opportunity to be heard appears to be more than our law requires." *Dunn*, 189 Mich App at 523 (cleaned up).

Based on the evidence presented to the trial court and the trial court's experiences, it was not clear error for the trial court to conclude as a factual matter that plaintiff's claims might not be legitimate. The surveillance evidence likely would damage plaintiff's credibility in front of the fact-finder. Even setting aside its effect on the fact-finder, such surveillance evidence would also reasonably make a trial court question whether plaintiff could meet the causation elements for his claims. Furthermore, the depositions of medical providers challenged the legitimacy of plaintiff's claims, separately and apart from any surveillance evidence. Although trial courts may err in requiring security bond for all of a plaintiff's claims when some of the claims have grounds, see *Zapalski v Benton*, 178 Mich App 398, 405; 444 NW2d 171 (1989), plaintiff in this case has not shown that the trial court clearly erred in finding his claims were arguably groundless and unwarranted.

B. BOND AMOUNT

Plaintiff next argues on appeal that the trial court abused its discretion by ordering a security bond because plaintiff could never be liable to pay attorney fees. Essentially, plaintiff is arguing that the trial court could not find a basis for the bond amount because plaintiff would never be liable for any costs, and therefore, the amount should be set at $0. The trial court determines the bond "amount in its discretion." MCR 2.109(A). The Court reviews this discretion for abuse. See *Farleigh*, 199 Mich App at 633-634.

Assuming for the sake of argument that the trial court set the amount based in part on attorney fees, it did not abuse its discretion in doing so. Plaintiff argues that attorney fees under MCL 500.3148(2) are not a proper criterion in determining a security bond. Generally, attorney fees are not ordinarily recoverable unless there is an exception, such as a statute that provides for them. *Dessart v Burak*, 470 Mich 37, 42; 678 NW2d 615 (2004). MCL 500.3148(2) provides that the trial court "may award an insurer a reasonable amount against a claimant as an attorney fee for the insurer's attorney in defending against a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation." But, if the claimant is due benefits because of loss resulting from the injury on which the claim is based, then an attorney fee awarded in favor of the insurer may be taken as an offset against the benefits. MCL 500.3148(3). "Judgment may also be entered against the claimant for any amount of an attorney fee awarded that is not offset against benefits or otherwise paid." *Id.*

Although the "term 'costs' ordinarily does not encompass attorney fees unless the statute or court rule specifically defines 'costs' as including attorney fees," *Dessart*, 470 Mich at 42, MCR 2.109(A) considers "all costs *and other recoverable expenses*" when setting the security bond (emphasis added). The inclusion of "and other recoverable expenses" most likely refers to consideration of attorney fees that can be recovered in deciding the amount under MCR 2.109(A). The trial court therefore did not clearly abuse its discretion if it considered attorney fees under MCL 500.3148(2) as other recoverable expenses.

Separately, plaintiff further argues that the attorney fees under MCL 500.3148(2) are not a proper consideration for a security bond because such consideration assumes that plaintiff's claim will fail and that the trial court will award fees. But, those are necessarily the assumptions that the trial court must make when deciding a security bond. The security bond amount equals the amount that the trial court may award assuming that plaintiff's claims are groundless or unwarranted. So, assuming that plaintiff's claims are fraudulent or so excessive as to have no reasonable foundation, the trial court would be able to award fees under MCL 500.3148(2), which therefore, makes them a recoverable expense and a proper consideration under MCR 2.109(A).

Regardless, it is not even clear on the current record that the trial court considered such attorney fees in setting the $25,000 amount. Although this Court encourages a trial court to articulate the basis for its decision on a security bond and the amount, *Belfiori*, 107 Mich App at 601, the trial court does not have to state with specificity its findings of fact. "Findings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule." MCR 2.517(A)(4); see *Dobronski v Transamerica Life Ins Co*, 347 Mich App 92, 103; 13 NW3d 895 (2023). Plaintiff argues that fees under MCL 500.3148(2) were the primary or sole basis in the trial court's calculation of the bond amount, but a review of the record on appeal does not support this argument.

In defendant Home-Owner's motion and at the motion hearing, defendant only mentions the costs for medical expert depositions; it does not mention MCL 500.3148 in reference to the bond amount. Plaintiff was the one to argue about the attorney fees in its response to defendants' motion and at the hearing on the motion. Although defendants also had a motion related to MCL 500.3148(2) pending at the time, that does necessarily mean that the trial court considered such fees in its decision, especially when the trial court and the party requesting the security bond did not mention the attorney fees before the trial court's decision.

Even without considering attorney fees, the trial court did not abuse its discretion in setting the amount at $25,000. "The starting presumption in all civil cases is [that] costs shall be allowed as a matter of course to the prevailing party." *Guerrero v Smith*, 280 Mich App 647, 671; 761 NW2d 723 (2008) (cleaned up). In addition to other costs typically taxed after trial, MCL 600.2549 provides that the "fees paid for depositions of witnesses" shall be allowed as taxable costs if filed with the clerk's office and read into evidence. See *Vanalstine v Land O'Lakes Purina Feeds, LLC*, 326 Mich App 641, 655; 929 NW2d 789 (2018). Defendants argued that the requested amount included costs of likely depositions of medical providers if the case went to trial. Plaintiff has not shown that costs associated with such depositions would not be taxable, nor has plaintiff shown that the aggregate taxable costs would be demonstrably and necessarily less than the ordered amount. For this reason, independent of the appropriateness of attorney fees or amount of

such fees, the trial court did not abuse its discretion in ordering a bond or setting that bond at $25,000.

C. FINANCIAL INABILITY

Finally, plaintiff argues on appeal that the trial court abused its discretion by refusing to consider plaintiff's financial inability to pay the bond on reconsideration. Plaintiff had ample time to provide evidence to the trial court and make a reasoned argument that he was unable to provide a security bond and should be excused from doing so under MCR 2.109(B)(1). He failed to do so until after the case was dismissed and he moved for reconsideration; his counsel's brief remark at the end of the hearing was neither evidence nor reasoned argument for discretionary relief under the court rule. "An argument raised for the first time in a motion for reconsideration does not preserve that claim of error for appellate review." *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 300-301; 14 NW3d 472 (2023). The matter has been waived, *id.* at 301, and we decline to exercise our discretion to review it on appeal.

III. CONCLUSION

The trial court did not abuse its discretion in requiring a security bond in light of the circumstances. Further, the trial court did not err in setting the amount of the bond based on the arguments the parties presented. Plaintiff has waived any argument based on his inability to provide the bond.

Affirmed.

/s/ Brock A. Swartzle
/s/ Colleen A. O'Brien
/s/ Mariam S. Bazzi