

STATE OF MICHIGAN
IN THE SUPREME COURT

TAMARA FILAS,

Plaintiff-Appellant,

vs.

MSC No. 151198, 151463
Court of Appeals Case No. 317972
Circuit Court Case No. 13-000652-NI
Honorable Susan D. Borman

KEVIN THOMAS CULPERT and
EFFICIENT DESIGN, INC. a
Michigan Corporation,

Defendants-Appellees.

Tamara Filas
In Pro Per
6477 Edgewood
Canton, MI 48187

MICHAEL C. O'MALLEY (P59108)
MATTHEW P. SALGAT (P74144)
Vandever Garzia, PC
Attorneys for Efficient Design
840 West Long Lake Road, Suite 600
Troy, MI 48098
(248) 312-2800; FAX (248) 879-0042
momalley@vgpclaw.com

JAMES C. WRIGHT (P67613)
Attorney for Efficient Design
**Zausmer, Kaufman, August &
Caldwell, PC**
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111; FAX 0100
jwright@zkact.com

DREW BROADDUS (P64658)
Attorney for Culpert
Secrest Wardle
2600 Troy Center Dr., PO Box 5025
Troy, MI 48007-5025
(616) 272-7966; FAX (248) 251-1829
dbroaddus@secrestwardle.com

**DEFENDANT-APPELLEE EFFICIENT DESIGN'S RESPONSE TO PLAINTIFF-
APPELLANT'S MOTIONS FOR RECONSIDERATION OF 9-2-15 ORDER DENYING
3-10-15 APPLICATION FOR LEAVE TO APPEAL AND FOR RECONSIDERATION
OF 9-2-15 ORDER DENYING 4-21-15 APPLICATION FOR LEAVE TO APPEAL**

NOW COMES Defendant-Appellee, Efficient Design, Inc., (“Efficient Design”) by and through its attorneys, Vandevveer Garzia, PC, and for its Response in Opposition to Plaintiff-Appellant’s Motions for Reconsideration of the Court’s September 2, 2015 Order Denying Plaintiff-Appellant’s March 10, 2015 Application for Leave to Appeal and for Reconsideration of the Court’s September 2, 2015 Order denying Plaintiff-Appellant’s April 21, 2015 Application for Leave to Appeal, states as follows:

I. INTRODUCTION

This case involves a first and third party auto negligence lawsuit that was properly dismissed at the trial court level. The Court of Appeals affirmed the Circuit Court’s dismissal, and this has Court denied review. Plaintiff-Appellant Tamara Filas (“Filas”) has, confusingly, filed two separate Applications for Leave to Appeal, which are nearly identical. Filas argues on appeal that, essentially, she should not have been required to execute authorizations provided by the defendants for the release of her medical records. Filas applied for this Court’s leave to appeal on the basis that the Court of Appeals’ March 10, 2015 Order affirming the dismissal of her case was clearly erroneous. Filas now moves for reconsideration of the Court’s September 2, 2015 Order denying her March 10, 2015 Application for Leave to Appeal, and for reconsideration of the Court’s Order denying her April 21, 2015 Application for Leave to Appeal. Efficient Design’s response addresses both Motions, the disposition of which is identical. Filas has failed to meet the standard necessary for a Motion for Reconsideration. Rather, she simply rehashes the same arguments raised in her applications for leave to appeal, and her Motion should be denied.

VANDEVVEER GARZIA P. C.

II. STANDARD OF REVIEW

Motions for rehearing or reconsideration in this Court are governed by MCR 7.311(F) and (G), which state that such motions “are subject to the restrictions contained MCR 2.119(F)(3).” “Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted.” MCR 2.119(F)(3). “The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” *Id.*

III. ARGUMENT

A. Filas’s Motion for Reconsideration Simply Presents the Same Issues Raised in Her Application for Leave to Appeal.

Filas’s Motion for Reconsideration simply restates arguments that she made in the lower courts and in her Application for Leave to Appeal. This is counter to the plain language of MCR 2.119(F)(3), which states that reconsideration will not be granted when a motion merely presents the same issues ruled on by this Court and the Court of Appeals below. In pursuing a claim for personal injury damages, Filas put her medical condition into controversy. The Court of Appeals in this case found that the Circuit Court properly exercised its discretion when it dismissed Filas’s Complaint when Filas failed to provide authorizations for her medical records. Plaintiff was required to provide access to her medical history, as “it is patently unfair for a party to assert a [physician-patient] privilege during pretrial proceedings” and “frustrate rightful discovery” of medical information. *Domako v Rowe*, 438 Mich 347, 356; 475 NW2d 30 (1991).

Simply put, Filas’s case was dismissed because she failed to cooperate with

well-established discovery procedure. She has failed to demonstrate that the Circuit Court erred in dismissing her case because of that failure of cooperation. Now, rather than attempt to demonstrate how this Court's decision to deny leave to appeal was palpably erroneous, Filas simply rehashes arguments that were previously unsuccessful before this Court, the Court of Appeals, and the Circuit Court. She attempts to argue, without merit, that she should not have been required to produce authorizations for medical records. Multiple courts have decided against Filas on this point, and instead of demonstrating error in this Court's decision to deny leave to appeal, Filas attempts to relitigate issues that have already been decided. Accordingly, Filas's Motion for Reconsideration should be denied.

B. Filas Fails to Demonstrate How the Court's Decision to Deny Leave to Appeal was Palpably Erroneous.

In raising the same arguments that she utilized in her Application for Leave to Appeal, Filas fails to show any palpable error in the decision to deny leave to appeal. Specifically, she fails to articulate any error "by which the court and the parties have been misled." See MCR 2.119(F)(3). Rather, Filas's arguments apparently center on errors by the lower court in interpreting the federal Health Insurance Portability and Accountability Act. See Plaintiff-Appellant's Br., at 1. The crux of her argument, as it has been throughout this litigation, is that she should not have been required to produce her medical records to Efficient Design, despite the holding to the contrary.

The Court's leave denial cannot be shown to be erroneous. For an application for leave to be granted, the application must show that:

- (1) the issue involves a substantial question about the validity of a legislative act;
- (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's

- official capacity;
(3) the issue involves a legal principle of major significance to the state's jurisprudence;
[...]
(5) in an appeal of a decision of the Court of Appeals,
 (a) the decision is clearly erroneous and will cause material injustice, or
 (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals[.]

See MCR 7.305(B). Filas cannot meet any of the above criteria for this Court to exercise its discretionary review. She failed to do so in her application for leave, and she again fails to do so in her Motion for Reconsideration.

Nowhere in Filas's Motion does she attempt to discuss why the Court's denial of leave to appeal was erroneous. She offers no basis (anywhere) as to how her case meets the criteria of MCR 7.305(B). The absence of that discussion is fatal to Filas's Motion, given that whether the Court erred pursuant to MCR 2.119(F)(3) is the only issue under review. Filas's brief concerns only alleged errors in the Court of Appeals, e.g., "the 3-10-15 Opinion. . . should be disposed of in the proper manner by [this Court]"; "the 3-10-15 Opinion is defamatory to [Filas]," etc. See Motion. Because Filas does not meet the high bar set by MCR 2.119(F)(3), her Motion must be denied.

IV. CONCLUSION

WHEREFORE, Defendant-Appellee Efficient Design, Inc. respectfully requests that this Honorable Court deny Plaintiff-Appellant's Motions for Reconsideration.

Respectfully submitted,

VANDEVEER GARZIA, P.C.

/s/ Michael C. O'Malley
MICHAEL C. O'MALLEY (P59108)
Attorneys for Def Efficient Design
840 W. Long Lake Road, Suite 600
Troy, MI 48098-6330
(248) 312-2800

Dated: October 15, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon the attorneys of record of all parties to the above cause by the court's e-filing on October 15, 2015. I declare under penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/s/Kimberly Coomer