Michigan's Binding Summary Jury Trial: Reward or Punishment?

Farleigh v. Amalgamated Transit Union, Local 1251[1]

I. INTRODUCTION

Ultimately, the purpose of law, lawyers, courts, and judges is to administer justice. As our society becomes increasingly litigious, judges and scholars have begun to realize that justice is not always best served in the traditional courtroom setting.[2] In an effort to bring the legal practice back in line with the quest for justice, courts have set intermediate goals to promote voluntary settlement by parties.[3] The summary jury trial has proved effective as a means to accomplishing such intermediate goals.[4]

In 1988, the Michigan Supreme Court added the summary jury trial to its arsenal of settlement devices available to trial judges.[5] Unfortunately, the summary jury trial employed in *Farleigh v. Amalgamated Transit Union, Local 1251* failed to meet its goal, and no settlement was reached by the parties.[6] Nevertheless, the Michigan Court of Appeals chose to enforce the summary jury verdict,[7] thereby drawing into question not only the ability of the summary jury trial to meet the preliminary goal of promoting settlement, but also the larger goal of the accomplishment of justice.

II. FACTS AND HOLDING

Rachel Farleigh [hereinafter Farleigh] filed suit against Amalgamated Transit Union, Local 1251 [hereinafter Union], alleging that she was denied membership in the union in retaliation for an earlier sexual harassment claim that she filed against a union leader.[8] The parties went through a mediation process in which an evaluation of the denial of membership was made by a neutral third party.[9]

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1. 502 N.W.2d 371 (Mich. Ct. App. 1993).
2. Senator Charles E. Grassley & Charles Pou, Jr., *Congress, The Executive Branch and the Dispute Resolution Process*, 1992 J. DISP. RESOL. 1, 3.
3. *Id.* at 7.
4. Hugh W. Brenneman, Jr. & Edward Wesoloski, *Blueprint for a Summary Jury Trial*, 65 MICH. BAR J. 888, 888 (1986).
5. Michigan Administrative Order # 1988-2, MICH. REPORTS CT. RULES, at A1-33 (1993).
6. *Farleigh*, 502 N.W.2d at 372.
7. *Id.* at 374.
8. *Id.* at 372.
9. *Id.*

Farleigh rejected the $10,000 mediation award in her favor.[10] Subsequently, the parties participated in a summary jury trial, which resulted in an advisory verdict of no cause of action.[11] Based on this finding, the Union moved pursuant to Michigan Court Rule 2.109(A)[12] and requested that the court require Farleigh to post a bond in the amount of $45,000.[13] The Union asserted that the bond would cover their costs if the plaintiff failed to recover at least ten percent more than the mediation award.[14] The trial judge granted the motion, but only required the plaintiff to post a $15,000 bond, an amount reflecting the Union's attorney's fees incurred after the mediation.[15] Subsequently, the court dismissed Farleigh's cause of action based on her failure to post the court ordered bond.[16]

Farleigh appealed, claiming that the trial judge abused his discretion by ordering the bond and dismissing the case.[17] The appellate court affirmed the trial court's ruling, holding that although the discretion of the trial judge generally extends only to matters of law, the discretionary bond and subsequent dismissal were appropriate since the summary jury trial had tested the merits of the case.[18]

III. LEGAL BACKGROUND

A. Michigan's Bond Law

The Michigan Rules of Civil Procedure allow for the filing of a bond "[o]n Motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper. . . ."[19] This rule was adopted in order to minimize the burdens imposed on litigants caused by frivolous claims.[20] The court is empowered to dismiss a lawsuit for failure to pay the security bond.[21] Michigan courts have historically demanded bonds of this nature where: (1) the claim is based on a tenuous legal theory; or (2) the claim is based on groundless

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10. *Id.*
11. *Id.*
12. MICH. CT. R. 2.109(A) provides in pertinent part:
    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. . . . The court shall determine the amount in its discretion.

Id.

13. *Farleigh,* 502 N.W.2d at 372.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 373.
19. MICH. CT. R. 2.109(A). *See supra* note 12.
20. Louya v. William Beaumont Hosp., 475 N.W.2d 434, 437 n.4 (Mich. Ct. App. 1991).
21. Hall v. Harmony Hills Recreation, Inc., 463 N.W.2d 254, 258 (Mich. Ct. App. 1990).

allegations.[22] However, the same standards are not applied when a motion to post a bond is based on challenging a party's factual assertions, rather than their legal theories.[23]

A party seeking a bond based on a tenuous theory of liability need only provide the court with a substantial reason showing the necessity of the bond.[24] On the other hand, a motion requesting a bond based on groundless allegations must meet a higher standard, although Michigan courts have not explicitly delineated this standard.[25] Michigan courts have traditionally invoked a strong presumption against requiring the posting of a bond based on the merits of a claim, rather than on the legal theories involved.[26] Courts have also held that this standard is not so stringent as to rise to the level required by a motion for judgment as a matter of law.[27]

In *Wells v. Fruehauf Corp.*,[28] the defendant moved for the posting of a bond based "primarily on the dubious merit of [the] plaintiff's claims."[29] The plaintiff's claim was one of simple negligence resulting from an auto accident, but when pressed to support her case, the plaintiff was unable to produce any evidence.[30] As a result, the trial court ordered that a bond be posted.[31] Subsequently, the appeals court upheld the decision based on an "abuse of discretion" standard of review.[32]

In the past, Michigan courts have addressed acceptable sources for judging the merits of a claim in relation to a motion to post a bond.[33] In *Louya v. William Beaumont Hospital*,[34] the Michigan Court of Appeals, in dicta, found that the trial judge would have erred in requiring the plaintiff to post a bond.[35] In *Louya*, the original counsel for the plaintiff had grown disenchanted with his client's obstetrical malpractice claim.[36] When questioned by the court regarding his reasons for withdrawal, the plaintiff's counsel stated that he thought the plaintiff's cause could not prevail at trial.[37] The appellate court determined that the judge would have exceeded his discretion by relying on the opinion of an

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22. *Id.* at 256; Zapalski v. Benton, 444 N.W.2d 171, 174 (Mich. Ct. App. 1989).
23. *Hall*, 463 N.W.2d at 257.
24. Wells v. Fruehauf Corp., 428 N.W.2d 1, 5 (Mich. Ct. App. 1988).
25. *Hall*, 463 N.W.2d at 257; *Wells*, 428 N.W.2d at 6.
26. *Hall*, 463 N.W.2d at 257; *Wells*, 428 N.W.2d at 6.
27. *Hall*, 463 N.W.2d at 256; *Wells*, 428 N.W.2d at 5.
28. 428 N.W.2d 1.
29. *Id.* at 3.
30. *Id.* at 2.
31. *Id.* at 3-4.
32. *Id.* at 6.
33. *Louya*, 475 N.W.2d at 439.
34. 475 N.W.2d 434.
35. *Id.* at 439.
36. *Id.* at 435.
37. *Id.* at 438.

attorney, who was seeking to withdraw from the case, when weighing the merits of the claim.[38]

In *Hall v. Harmony Hills Recreation, Inc.*,[39] the court noted that it was improper to evaluate a motion to post bond based solely on impressions gained during proceedings that were eventually declared a mistrial.[40] In *Hall*, following a mistrial based on jury bias, a "slip-and-fall" plaintiff was ordered to post a bond prior to a second trial.[41] The appellate court determined that the trial judge had not only abused his discretion in considering the previous mistrial, but that the court should have "limited [its inquiry] to the plaintiff's pleading."[42]

B. The Summary Jury Trial

The summary jury trial[43] was originally created by Federal District Judge Thomas D. Lambros in 1980 as a settlement technique to relieve pressure on the court's docket.[44] Since that time, the procedure has gained popularity in many federal district courts because of its promise of decreased court costs and decreased time invested in litigation.[45] As more courts have incorporated the procedure, scholars have begun to consider the value of binding[46] summary jury trials.[47]

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38. *Id.* at 439-40.

39. 463 N.W.2d 254.

40. *Id.* at 256-58.

41. *Id.* at 255.

42. *Id.* at 257.

43. For a detailed discussion of the summary jury trial procedure, *see* Thomas D. Lambros, *The Summary Jury Trial and Other Alternative Methods of Dispute Resolution*, 103 F.R.D. 461, 470-71 (1984).

44. A. Leo Levin & Deirdre Golash, *Alternative Dispute Resolution in Federal District Courts*, 37 U. FLA. L. REV. 29 (1985).

45. Lambros, *supra* note 43, at 475. This sentiment is echoed by numerous other sources: "[Courts] can spend more time on the resolution of civil controversies rather than on the numbing oversight of a process fraught with delay, discord, and even boredom." Barry C. Schneider, *Summary Jury Trials with Ceilings and Floors*, LITIG., Summer 1991, at 3.

46. This Note distinguishes between ***binding*** summary jury trials, where the parties voluntarily agree to be bound by the jury's decision, and ***mandatory*** summary jury trials, where judges have compelled participation in the procedure.

47. Thomas B. Metzloff, *Reconfiguring the Summary Jury Trial*, 41 DUKE L.J. 806 *passim* (1992); Schneider, *supra* note 45, at 3. Much of the initial debate on summary jury trials has focused on the courts' authority to compel jurors to serve on summary juries, (*See, e.g.*, United States v. Exum, 744 F. Supp. 803 (N.D. Ohio 1990); Charles W. Hatfield, Note, *The Summary Jury Trial: Who Will Speak for the Jurors?* 1991 J. DISP. RESOL. 151), and the courts' authority to require parties to participate. (*See* Lambros, *supra* note 43, at 469; ***but see*** Charles F. Webber, *Mandatory Summary Jury Trial: Playing by the Rules?*, 56 U. CHI. L. REV. 1495 (1989)). Although these issues remain unresolved, [*See* Strandell v. Jackson County, 838 F.2d 884 (7th Cir. 1987) (holding that the court *could not* require the summary jury trial); *c.f.* Arabian Am. Oil v. Scarfone, 119 F.R.D. 448 (M.D. Fla. 1988); Federal Reserve Bank of Minneapolis v. Carey-Canada, Inc., 123 F.R.D. 603 (D. Minn. 1988); McKay v. Ashland Oil, Inc., 120 F.R.D. 43 (E.D. Ky. 1988) (holding that the courts *can* require participation in the summary jury trial)], the debate