

Court of Appeals, State of Michigan

ORDER

Lucius Snead v Michigan Automobile Insurance Placement Facility

Karen M. Fort Hood
Presiding Judge

Docket No. 355615

Cynthia Diane Stephens

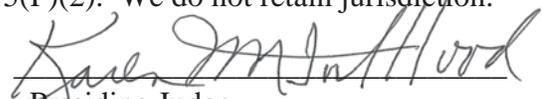
LC No. 19-007622-NF

Thomas C. Cameron
Judges

Pursuant to MCR 7.205(E)(2), and in lieu of granting the delayed application, the trial court’s June 4, 2020 order is VACATED, and the matter REMANDED for reconsideration of the motion to dismiss. The trial court dismissed certain claims as a sanction for discovery violations. However, it did so without holding a hearing and without providing any reasoning in written form. Before ordering dismissal as a sanction for discovery violations, the record must “reflect that the trial court gave careful consideration to the factors involved and considered all of its options in determining what sanction was just and proper in the context of the case before it.” *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990). The record contains no indication that the trial court considered the relevant factors or all of its options before ordering dismissal as a sanction. As such, the trial court abused its discretion. *Id.* We also note that, under the circumstances of this case, the trial court decided the motion before plaintiff’s answer to the motion was due, and without affording plaintiff an opportunity to orally respond to the motion. On remand, the trial court is directed to reconsider the motion to dismiss after affording plaintiff a meaningful opportunity to respond. The trial court must make a record of its decision as required by *Dean*, 182 Mich App at 32.

We further note that, while the parties and trial court believe that the October 28, 2020 order was a final order resolving the last pending claims in this suit, it is not clear whether claims made by intervening plaintiff ZMC Pharmacy against defendant Citizens Insurance Company of America have been fully resolved. The parties and trial court may wish to examine whether those claims have been resolved.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.


Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

February 22, 2021

Date


Chief Clerk