

STATE OF MICHIGAN
COURT OF APPEALS

JOHN MANIACI and CHERYL MANIACI,

Plaintiffs-Appellants,

v

UNPUBLISHED
September 6, 1996

ROBERT HALSO, CATHERINE HALSO, and
CHAMPION & BAER REAL ESTATE,

Defendants-Appellees.

No. 178203
LC No. 93-322403 CK

Before: Young, P.J., and Holbrook, Jr., and Gribbs, JJ.

PER CURIAM.

In this breach of contract and specific performance action, plaintiffs appeal as of right from an order of the Wayne Circuit Court dismissing their complaint against defendants. We affirm.

Plaintiffs first assert that they were denied procedural due process of law when their attorney failed to appear at a hearing on defendant Champion & Baer's motions to compel discovery and for sanctions. We find no merit to this argument.

Rudimentary procedural due process requires notice, an opportunity to defend, a hearing, and a written, although relatively informal, statement of findings. *Feaster v Portage Public Schools*, 210 Mich App 643, 655; 534 NW2d 242 (1995). Notice should be reasonably calculated, under all the circumstances, to apprise interested parties of the proposed action and afford them an opportunity to present their objections. *Vicencio v Ramirez*, 211 Mich App 501, 504; 536 NW2d 280 (1995). The neglect or omission of a party's attorney does not constitute adequate grounds for setting aside a judgment. Such neglect or omission is generally regarded as attributable to the client. *Yenglin v Mazur*, 121 Mich App 218, 222; 328 NW2d 624 (1982).

Here, plaintiffs were properly served and notified of the January 28, 1994, hearing, through their legal representative of record. At the hearing, counsel for Champion & Baer was present and indicated that he had attempted to contact plaintiffs' attorney prior to the hearing, but was unsuccessful. After hearing arguments, the court, among other things, granted Champion & Baer's motion to compel answers to interrogatories, awarded Champion & Baer \$600 in discovery sanctions, and extended the

discovery cutoff date to March 31, 1994. Under the circumstances, plaintiffs' right to rudimentary procedural due process was satisfied. The failure of plaintiffs' attorney to appear at the hearing does not rise to the level of a constitutional violation.

Next, we find no abuse of discretion by the trial court in refusing to set aside the dismissal of plaintiffs' complaint pursuant to MCR 2.612(C), where plaintiffs' substitute attorney acted with apparent authority in executing the stipulation to dismiss the case. See *McNeil v Caro Community Hospital*, 167 Mich App 492, 497-498; 423 NW2d 241 (1988). See also *Nelson v Consumers Power Co*, 198 Mich App 82, 89-90; 497 NW2d 205 (1993). Moreover, contrary to plaintiffs' argument, the order of dismissal was not premature inasmuch as it was entered *after* the deadline for completion of discovery.

Finally, plaintiffs request a remand to seek leave to amend their complaint. Because plaintiffs failed to move for leave to amend their complaint in the trial court, as required by MCR 2.118(A), this issue is not preserved for appellate review and we decline to address it. See *Fuga v Comerica Bank*, 202 Mich App 380, 383; 509 NW2d 778 (1993).

Affirmed.

/s/ Richard P. Young
/s/ Donald E. Holbrook, Jr.
/s/ Roman S. Gribbs