STATE OF MICHIGAN

COURT OF APPEALS

RICHARD L. PUTNEY,

Plaintiff-Appellant,

v

CITY OF LANSING,

Defendant-Appellee.

UNPUBLISHED
December 10, 1996

No. 178112
LC No. 93-074659-NZ

RICHARD L. PUTNEY,

Plaintiff-Appellant,

v

TERRY McKANE, JAN LAZAR, JOELLYN FLAHERTY,

Defendants-Appellees.

No. 178113
LC No. 93-075987-NZ

Before: MacKenzie, P.J., and Jansen and T.R. Thomas*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing his consolidated cases with prejudice. We affirm.

Plaintiff filed actions in the Court of Claims and circuit court alleging that he had been discharged from his employment as the Director of Labor Relations for the City of Lansing for opposing an early retirement package for Lansing employees. On March 10, 1994, defendants served plaintiff with

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* Circuit judge, sitting on the Court of Appeals by assignment.

Defendants' Third Set of Interrogatories and Request for Production of Documents. Pursuant to MCR 2.309 and 2.310, plaintiff was required to respond within twenty-eight days. When no response was made, the parties agreed to extend the due date for the response until April 27, 1994. Again, plaintiff failed to respond.

Defendants filed a motion to compel answers to the interrogatories, but before the motion was heard, plaintiff and defendants entered into a stipulation that provided, in relevant part:

> In order to avoid the necessity of holding a hearing on Defendants' Motion to Compel Discovery, as scheduled for June 22, 1994, the parties have agreed that Plaintiff shall provide Defendants with full and complete answers to Defendants' Third Set of Interrogatories and full and complete disclosure of all documents in response to Defendants' Requests for Documents by the close of business on July 5, 1994. *Should Plaintiff fail to provide such answers and documents, as agreed to herein, the above-captioned lawsuits shall be dismissed with prejudice.* [Emphasis added.]

Consistent with this stipulation, the court entered a discovery order requiring plaintiff to provide full and complete answers and full production of documents by 5:00 p.m. on July 5, 1994.

On July 5, 1994, plaintiff delivered his responses to Defendants' Third Set of Interrogatories and Request for Production of Documents. Plaintiff failed to provide any answer for one of the interrogatories, however, leading to the dismissal of his claims for failure to comply with the June 22, 1994 stipulation and order.

On appeal, plaintiff contends that the trial court erred in dismissing his claims because any problem with his answers was inadvertent and he attempted to remedy the deficiencies in a timely manner. We reject this argument. Parties to a lawsuit may stipulate to the manner in which discovery will be conducted. MCR 2.302(F)(2). A stipulation is given full force and effect and is binding upon the parties unless abandoned or disaffirmed. Once received and approved, stipulations are sacrosanct. Neither a judge nor a hearing officer may alter them. *Nuriel v Young Women's Christian Ass'n of Metropolitan Detroit*, 186 Mich App 141, 147; 463 NW2d 206 (1990). Here, plaintiff made no argument regarding the enforceability of the parties' stipulation, and instead, as noted by the trial court, simply made excuses for his noncompliance with the stipulation and discovery order. Dismissal under the circumstances was clearly within the contemplation of the parties at the time of the stipulation. We find no error.

Plaintiff also contends that defendants should be estopped from seeking dismissal. This argument was not raised in the trial court and hence is not preserved for appellate review. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). In any event, the claim is without merit. This Court has held that equitable estoppel should be applied only when the facts calling for it are unquestionable and the wrong to be prevented is undoubted. See *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 552; 487

NW2d 499 (1992). Although plaintiff argues that the record is uncontradicted that defendants made a representation that plaintiff's answers to interrogatories were sufficient, defendants stated at the July 20, 1994 hearing that, upon receiving plaintiff's answers, defendants' counsel immediately notified plaintiff that they did not comply with the stipulated order. Thus, the facts which plaintiff claims call for equitable estoppel are not unquestionable, and application of the doctrine is not warranted.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas