

STATE OF MICHIGAN
COURT OF APPEALS

MAN LEWIS, JR.,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

December 30, 1997

No. 197764

Gratiot Circuit Court

LC No. 95-003714 CZ

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

On July 10, 1996, the Gratiot Circuit Court entered an order granting plaintiff's motion for voluntary dismissal of this civil action. Unfortunately, the circuit court seems to have overlooked the fact that on December 4, 1995, plaintiff withdrew his motion for voluntary dismissal. Contrary to defendant's argument on appeal, plaintiff's request to withdraw his motion for voluntary dismissal was properly captioned in the Gratiot Circuit Court, appears in the lower court file, and does not contain any language suggesting that it is subject to any conditions, such as favorable action on plaintiff's motion to amend his complaint.

Accordingly, as plaintiff had the right to withdraw his motion for voluntary dismissal in the absence of objection by defendants, no such motion was pending and the circuit court could therefore not properly have granted such a motion. By definition, dismissal of the action at that point was anything but "voluntary" from plaintiff's perspective. MCR 2.504(A).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber

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