

STATE OF MICHIGAN
COURT OF APPEALS

JOANNA LEE FENECH,

Plaintiff-Appellant,

v

J.C. PENNEY, INC.,

Defendant-Appellee.

UNPUBLISHED

January 13, 1998

No. 198337

Wayne Circuit Court

LC No. 96-636699 NO

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Plaintiff sued defendant for personal injuries, but her original action was dismissed pursuant to MCR 2.313(B), when plaintiff failed to appear, pursuant to court order, for deposition at a scheduled time and place. No appeal from that original order of dismissal has been taken, and therefore the propriety of that action is not properly before this Court at this time.

Following that dismissal, plaintiff refiled an identical complaint, the present action. The trial court dismissed on res judicata grounds. Plaintiff contends that res judicata does not apply because dismissal of the original action was not “on the merits.” This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff’s contentions are completely without foundation in light of MCR 2.504(B)(1) and (3), which authorize dismissal of an action if a plaintiff fails to comply with the court rules or a court order, and provides further that unless otherwise specified in the order of dismissal, such a dismissal “operates as an adjudication on the merits.”

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly