

STATE OF MICHIGAN
COURT OF APPEALS

MARY ROBERTS-SIMMS,

Plaintiff-Appellant,

V

LONNIE CALDWELL, NATHANIEL
GULLEDGE, DEBRA PRICE, and AUSCO
PRODUCTS, INC.,

Defendants-Appellees.

UNPUBLISHED

April 26, 2002

No. 229336

Berrien Circuit Court

LC No. 98-004012-CL

Before: Gage, P.J., and Griffin and Buth*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing the case pursuant to MCR 2.504(B)(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In December 1998 plaintiff, then acting *in propria persona*, filed suit alleging that she was subjected to racial discrimination and sexual harassment during her employment at defendant Ausco Products, Inc. During the ensuing months plaintiff failed to comply with court rules and orders of the trial court. She supplied incomplete responses to defendants' request for production of documents and first set of interrogatories, falsely represented that the parties had agreed upon a mediator and subsequently failed to comply with the trial court's order that she pay one-half of the mediator's fee. Plaintiff also failed to comply with the trial court's order that she reduce her witness and exhibit lists, which were filed in an untimely manner, to manageable levels. The trial court denied defendants' initial motion to dismiss, but provided that defendants could renew the motion if plaintiff's non-compliance continued.

Defendants renewed their motion to dismiss the case. They cited plaintiff's continuing failure to comply with court orders, and also alleged that plaintiff intentionally misrepresented her medical status in an attempt to secure an adjournment of trial. The trial court granted the motion, concluding that in light of plaintiff's continuing non-compliance and deliberate misrepresentation of her medical status, dismissal was the only remaining viable option.

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

MCR 2.504(B)(1) provides that an action may be dismissed if a plaintiff fails to comply with court orders or the court rules. Before imposing dismissal as a sanction, the trial court must consider: (1) whether the violation was willful or accidental; (2) the party's history of refusing to comply with orders; (3) the prejudice to the opposing party; (4) whether there is a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. The trial court must evaluate other options on the record and conclude that dismissal is just and proper. We review the trial court's decision for an abuse of discretion. *Vicencio v Ramirez*, 211 Mich App 501, 506-507; 536 NW2d 280 (1995).

Plaintiff argues that the trial court abused its discretion by dismissing the case. We disagree and affirm. Initially, we note that plaintiff's contention that the trial court improperly viewed the mediation evaluation is without merit. This case was not evaluated pursuant to MCR 2.403, and no mediation evaluation was produced. The record showed that plaintiff engaged in a continuing series of abuses. She provided incomplete information in responses to a request for production of documents and interrogatories, stated falsely that the parties had agreed upon a mediator, and failed to comply with the trial court's order to pay one-half of the fee charged by the mediator. Plaintiff provided no explanation for her failure to comply with the order, and made no effort to cure the defect.

Initially the trial court declined to dismiss the case, but ordered plaintiff to pare her witness and exhibits lists to accommodate a two-day trial schedule. The trial court put plaintiff on notice that it would consider a renewed motion to dismiss if she did not begin complying with orders and the court rules. Plaintiff failed to comply with the order to reduce the number of witnesses and exhibits. She gave no explanation for her failure to comply with the order, and made no effort to cure the defect. Subsequently, plaintiff misrepresented her medical status in an effort to secure an adjournment of trial. The trial court found that the misrepresentation was deliberate.

The trial court concluded that because plaintiff's abuses had continued throughout the case and because plaintiff had made no effort to cure the defects, in spite of being given the opportunity and being warned of the consequences of failing to do so, dismissal was the only remaining viable sanction. Plaintiff's willful non-compliance, particularly as it related to witness and exhibit lists, prevented defendants from engaging in meaningful discovery and trial preparation. The trial court correctly concluded that under the circumstances, a lesser sanction would not serve the interests of justice. Dismissal of the case did not constitute an abuse of discretion under the circumstances. MCR 2.504(B)(1); *Vicencio, supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth