

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT RAMA,

Plaintiff-Appellant,

v

OSCAR TUMACDER,

Defendant-Appellee,

and

JOHN LINK and INTERNATIONAL
INDUCTION SERVICES, INC.,

Defendants.

UNPUBLISHED

February 5, 2004

No. 243683

Oakland Circuit Court

LC No. 2001-031670-CB

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order that dismissed his claims. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff’s counsel failed to appear for a court-ordered June 11, 2002, conference and the court rescheduled the conference for June 18, 2002. Plaintiff’s counsel again failed to appear, and the court dismissed the case on defendant’s motion. We review the trial court’s ruling for an abuse of discretion. *Schell v Baker Furniture Co*, 232 Mich App 470, 474; 591 NW2d 349 (1998), *aff’d* 461 Mich 502 (2000).

Counsel’s failure to appear for the conference constituted grounds for dismissal under MCR 2.504 and MCR 2.401(G)(1). Specifically, MCR 2.504(B)(1) authorizes a defendant to move for dismissal of the case if the plaintiff fails to comply with the court rules or an order of the court. Although dismissal for counsel’s failure to appear was authorized, it “is a drastic step that should be taken cautiously.” *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 506; 536 NW2d 280 (1995). “Before imposing such a sanction, the trial court is required to carefully evaluate all available options on the record and conclude that the sanction of dismissal is just and proper.” *Brenner v Kolk*, 226 Mich App 149, 163; 573 NW2d 65 (1997). Factors to be considered include:

(1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists 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. [*Vicencio, supra* at 507.]

The trial court dismissed the action without considering the appropriate factors and evaluating its options on the record. The dismissal was entered because plaintiff failed to appear for the make-up date, yet the court acknowledged that plaintiff's counsel may not have had notice of the hearing. Although plaintiff had failed to comply with other aspects of the scheduling order, that is but one of many factors to be considered in determining whether dismissal is warranted. Because the trial court failed to evaluate all the relevant factors before ordering dismissal, we find that it abused its discretion. We remand for reconsideration in light of the relevant factors.

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

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood