

Court of Appeals, State of Michigan

ORDER

Stacy Y O'Neal v Bon Secours Cottage Health Services

Docket No. 285356

LC No. 06-630491-NH

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the March 14, 2008, order of the Wayne Circuit Court granting plaintiff's motion and denying defendant's motion for reconsideration hereby is REVERSED as to the striking of defendant's defenses. Under the totality of the circumstances, the imposition of such a harsh sanction was disproportionate. See generally *Laudenslager v Pendell Printing, Inc*, 215 Mich App 167, 173; 544 NW2d 721 (1996). The circuit court should have considered the efficacy of a lesser sanction, *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990), particularly on reconsideration once defendant had produced the protocol. Given the delay that has resulted from defendant's failure to timely produce the relevant chest pain protocol, the circuit court may consider imposing monetary sanctions, MCR 2.313(A)(5); MCR 2.313(B). The case is REMANDED to the circuit court for further proceedings consistent with this order.

The Court retains no further jurisdiction.

This order is to have immediate effect, MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 23 2008

Date

Sandra Schultz Mengel
Chief Clerk