

STATE OF MICHIGAN  
COURT OF APPEALS

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SHIRLEY WOLFE-KIRKEY,

Plaintiff-Appellant,

v

GLENN R. STEVENS,

Defendant-Appellee.

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UNPUBLISHED

November 22, 2002

No. 236813

Genesee Circuit Court

LC No. 00-068103-NM

Before: Griffin, P.J., and Gage and Meter, JJ.

MEMORANDUM.

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

Defendant moved to dismiss plaintiff's complaint pursuant to MCR 2.504(B)(1) because plaintiff had violated a court order regarding case evaluation and because plaintiff failed to prosecute the case with due diligence. The trial court granted the motion. We review the trial court's ruling for an abuse of discretion. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995).

Although dismissal of the action was authorized, MCR 2.504(B)(1), it "is a drastic step that should be taken cautiously." *Vicencio, supra*. "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 in determining whether dismissal is an appropriate sanction include: (1) whether the violation was willful or accidental; (2) the degree of compliance with other parts of the order; (3) attempts to cure the defect; (4) whether the party has a history of refusing to comply with other court orders; (5) whether the party has a history of deliberately delaying the proceedings; (6) whether the opposing party has been prejudiced; and (7) whether a lesser sanction would better serve the interests of justice. *Vicencio, supra* at 507; *Zantop Int'l Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 360; 503 NW2d 915 (1993).

Here, the trial court granted defendant's motion without addressing the relevant factors or considering lesser sanctions. Although dismissal may very well be appropriate given the history of the case, we cannot adequately review the issue of the trial court's exercise of discretion without the benefit of the trial court's findings under the factors set forth above. Accordingly,

we reverse the order of dismissal and remand for a determination regarding the appropriate sanction in light of the appropriate factors.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter