

STATE OF MICHIGAN
COURT OF APPEALS

ANTONIA BERRY, Personal
Representative of the Estate of
DONALD DARKINS, Deceased,

Plaintiff-Appellant,

v

BRASS CRAFT MANUFACTURING and
MASCO CORP,

Defendants-Appellees,

and

MALISSA RUSAU,

Defendant.

UNPUBLISHED
August 5, 1997

No. 195374
Wayne Circuit Court
LC No. 95-510819-NP

Before: MacKenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants Brass Craft Manufacturing and Masco Corp, pursuant to MCR 2.116(C)(10), thereby dismissing plaintiff's products liability claim against defendants. We affirm in part, reverse in part, and remand.

The first issue is whether the trial court improperly granted summary disposition due to plaintiff's failure to prove a defect in defendants' product. A trial court's grant of summary disposition is reviewed de novo on appeal. *Pinkney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Courts are liberal in finding a genuine issue of material fact. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). "Generally, summary disposition is premature if granted before discovery on a disputed issue is complete." *State Treasurer v Sheko*,

218 Mich App 185, 190; 553 NW2d 654 (1996). Summary disposition is not premature if discovery does not stand a fair chance of finding factual support to oppose the motion. *Id.*

Defendants argued that plaintiff only alleged one theory of defect with the product and that plaintiff's expert discounted that theory, thereby making summary disposition proper. A review of plaintiff's complaint, however, reveals that she had alleged numerous theories of defect. Plaintiff's expert also suggested that more testing was necessary on the product to determine if a defect existed. Thirty-nine days of discovery time remained when the trial court granted defendants' motion for summary disposition. No experts had been deposed as of the time of the motion. Although plaintiff had conducted little discovery, defendants have failed to establish that had the full discovery period been completed, plaintiff could not have found a factual basis to counter the motion. Therefore, the trial court's grant of summary disposition was premature and, thus, improper.

Plaintiff also argues that the trial court improperly sanctioned her for failing to comply with a discovery order. She contends that the ordering of sanctions and the amount she was ordered to pay were improper. A trial court's award of discovery sanctions will not be overturned unless there is an abuse of discretion. *Edge v Ramos*, 160 Mich App 231, 234; 407 NW2d 625 (1987).

Plaintiff initially failed to answer defendants' interrogatories. The trial court ordered that she answer them on January 17, 1996. As of March 1, 1996, and after several reminders, plaintiff still had not answered the interrogatories, so defendants filed their motion for sanctions. The only excuse offered by plaintiff's counsel was that the answers were misplaced in the file. Under these circumstances, the trial court did not abuse its discretion in ordering plaintiff to pay sanctions to defendant.

However, the trial court made no inquiry regarding the actual cost that plaintiff's delay in answering the interrogatories caused defendants. It merely ordered plaintiff to pay \$1,500. "An appellate court cannot review a decision for abuse of discretion unless it knows how and why the discretionary decision was made." *Houston v Southwest Detroit Hospital*, 166 Mich App 623, 631; 420 NW2d 835 (1987). Because the lower court record does not indicate how the trial court arrived at the amount of \$1,500 in sanctions, this Court is unable to review that decision for an abuse of discretion. Therefore, we must remand so that the trial court can articulate how it arrived at the sanction amount.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Janet T. Neff

/s/ Jane E. Markey