

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD PACHOLKE, EARL MARIO
BROWN, DANIEL SCALVINI, MELVIN
MCCURRY, ARTHUR DENNIS, GARY
GUERTIN, MICHAEL HILLMAN, ROBERT
GRIFFIN, DONALD COLEMAN, WILLARD
PACHOLKE, DENNIS DAVIS, CAROL
DUDEK, ABE SELMAN, JAMES JARZEBOSKI,
KATHLEEN GOLOTA, NICK KLAYO,
ALBERT MILTON and DAVE MACUGA,

Plaintiffs-Appellees,

v

AMERICAN AXEL & MANUFACTURING
COMPANY,

Defendant-Appellant.

UNPUBLISHED
December 2, 2003

No. 241337
Wayne Circuit Court
LC No. 02-201846-CK

Before: Murray, P.J., and Gage and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right from a circuit court order granting in part plaintiffs' motion for reconsideration. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Most of the plaintiffs herein filed a prior action against defendant (*Pacholke I*). In that action, the court entered an order compelling discovery. That order provided that each plaintiff would have to pay sanctions of \$100 per day for each day after September 30, 2001 that the discovery remained outstanding. On October 12, 2001, the parties stipulated to dismiss *Pacholke I* without prejudice. The order of dismissal provided that the sanctions previously ordered had to be paid in the event plaintiffs filed a second suit.

Plaintiffs filed this action without paying the sanctions. The trial court granted defendant's motion to dismiss because the condition precedent to filing suit (payment of the sanctions) had not been met. The order provided that the dismissal did not affect defendant's right to costs as ordered in *Pacholke I*. Plaintiffs sought reconsideration on the ground that the amount of sanctions imposed in *Pacholke I* was excessive and should be reduced in the event they filed a third suit. The court granted the motion.

In general, a party moving for reconsideration “must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” MCR 2.119(F)(3). Whether to grant a motion for reconsideration is a matter left to the trial court’s discretion. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000).

In seeking reconsideration, plaintiffs did not raise any error in the court’s ruling on defendant’s motion to dismiss. Rather, plaintiffs claimed error with respect to the order compelling discovery entered in *Pacholke I*, which order gave rise to the condition precedent incorporated in the stipulated order of dismissal. Both of the orders entered in *Pacholke I* were issued by a court having jurisdiction over the matter and were not appealed. Therefore, they were not subject to collateral attack in the present action. *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). Because plaintiffs could not collaterally attack those orders in this action, the trial court abused its discretion granting the motion for reconsideration.

Reversed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly