

STATE OF MICHIGAN
COURT OF APPEALS

CAMILLE SMALLEY,

Plaintiff-Appellant,

v

MVB MORTGAGE CORPORATION,
MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY, and
DOVENMUEHLE,

Defendants-Appellees.

UNPUBLISHED

August 17, 2004

No. 246244

Wayne Circuit Court

LC No. 01-126534-CH

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting defendant MVB Mortgage Corporation's motion to dismiss. We affirm.

Plaintiff, via counsel, filed suit seeking to enjoin defendant MVB Mortgage Corporation from continuing with foreclosure proceedings. The trial court issued a preliminary injunction precluding MVB from continuing with foreclosure proceedings contingent on plaintiff's agreement to make timely mortgage payments. The parties made little progress in moving toward a resolution of the case. Plaintiff's counsel was granted permission to withdraw, and the trial court directed plaintiff to appear on her own behalf or to retain substitute counsel. Plaintiff failed to attend a settlement conference. Attorney Allison Weathersby (P45062) attended the conference and attempted to argue on behalf of plaintiff, but the trial court precluded her from doing so on the ground that she had not filed an appearance in the case. Subsequently, the trial court granted defendant's motion to dismiss the case. Weathersby filed an appearance and a motion for reconsideration. The trial court denied the motion.

The failure of a party or attorney to attend a scheduled conference as directed by the court may constitute a default or a ground for dismissal. MCR 2.401(G)(1). The defendant may move for dismissal of the action against him if the plaintiff fails to comply with the court rules or an order of the court. MCR 2.504(B)(1). Dismissal is a drastic step. Before imposing dismissal as a sanction, the trial court should evaluate other options on the record and conclude that the sanction of dismissal is warranted under the circumstances. We review the trial court's decision to dismiss a case for an abuse of discretion. *Vicencio v Ramirez*, 211 Mich App 501, 506-507; 536 NW2d 280 (1995).

Plaintiff argues that the trial court abused its discretion by preventing Weathersby from arguing on her behalf at the settlement conference and by dismissing the case. We disagree and affirm. The record reveals that Weathersby had several days' notice of the conference and that she was advised by MVB's counsel that no discussions could take place until she filed an appearance. Weathersby failed to file an appearance prior to the conference and failed to comply with the trial court's instruction, given on the morning of the hearing, to do so. Weathersby had more than adequate time to file an appearance prior to the conference, thus obviating the need to appear via an alternative method as contemplated by MCR 2.117(B)(2)(a). The trial court concluded that given plaintiff's failure to appear on her own behalf or to secure counsel, her failure to take substantial steps to prosecute the case, and Weathersby's admitted act of signing MVB's counsel's name to a document without his permission, MVB was entitled to dismissal of the action against it. No abuse of discretion occurred. MCR 2.504(B)(1); *Vicencio, supra*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly