

STATE OF MICHIGAN
COURT OF APPEALS

SURGICAL INSTITUTE OF MICHIGAN, LLC,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORT,

Defendant-Appellee.

UNPUBLISHED
September 10, 2020

No. 350415
Wayne Circuit Court
LC No. 19-009984-NF

Before: LETICA, P.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

Plaintiff Surgical Institute of Michigan, LLC, filed this first-party no-fault case in the Oakland Circuit Court, and subsequently concurred with defendant Suburban Mobility Authority for Regional Transport that proper venue lay in Wayne County. The order changing venue stated that “all required costs relative to the change of venue be paid by Plaintiff pursuant to MCR 2.223(B)(1).”

Plaintiff did not pay the costs, and the Wayne Circuit Court dismissed the action under MCR 2.223(B)(2) after 56 days had expired. Plaintiff filed an unsuccessful motion for relief from judgment. Because plaintiff failed to factually support its relief-from-judgment motion, the circuit court did not abuse its discretion by denying it. We are constrained to affirm.

When the order of dismissal was entered, MCR 2.223(B)(2) provided that after a transfer of venue, “no further proceedings may be had in the action until the costs and expenses allowed under this rule have been paid. If they are not paid within 56 days from the date of the order changing venue, the action *must* be dismissed by the court to which it was transferred.” (Emphasis added.) In other words, the rule envisioned no exercise of discretion. Dismissal for failure to pay the transfer fee was a mandatory sanction. See *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 130; 573 NW2d 61 (1997) (“Our Supreme Court’s use of the word ‘must’ indicates that the award of costs is mandatory, not discretionary.”).

Shortly after the case was dismissed, plaintiff again sought relief from judgment, this time under MCR 2.612(C)(1)(a) and (f). MCR 2.612(C)(1)(a) permits a court to relieve a party from

an order on the party's motion and on the basis of "[m]istake, inadvertence, surprise, or excusable neglect"; while subsection (f) affords an opportunity for relief based on "[a]ny other reason justifying relief from the operation of the judgment." In support of both grounds, plaintiff asserted only that its "failure to pay the transfer fee was due to an oversight and was not deliberate." While we are confident that this was the case, we are troubled by plaintiff's failure to support that assertion with any evidence—such as an affidavit explaining why plaintiff's neglect should be deemed "excusable." We suspect that the circuit court judge noticed the same omission. And although the plaintiff is certainly prejudiced by dismissal, plaintiff has not substantiated any "extraordinary circumstances" mandating that the judgement be set aside. See *Rose v Rose*, 289 Mich App 45, 54; 795 NW2d 611 (2010).

Our review of a court's denial of relief from judgment is circumscribed by the abuse of discretion standard. *Peterson v Auto Owners Ins Co*, 274 Mich App 407, 412; 733 NW2d 413 (2007). An abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). In the absence of any facts explaining or supporting plaintiff's request for relief from judgment, we are hard pressed to find the circuit court's decision unreasonable or unprincipled.

We affirm.

/s/ Anica Leticia
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher