

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN NOLAND,

Plaintiff-Appellant,

v

COMFORT MATTRESS COMPANY,

Defendant-Appellee.

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UNPUBLISHED

September 17, 2020

No. 348853

Macomb Circuit Court

LC No. 2014-002087-CK

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

PER CURIAM.

Plaintiff appeals as of right the trial court’s order denying his motion to restore his case and set a scheduling order. We reverse and remand for further proceedings consistent with this opinion.

**I. BACKGROUND**

In May 2014, plaintiff filed a complaint in the trial court alleging several claims arising from the termination of his employment with defendant. During discovery, defendant removed the case to the federal court in the Eastern District of Michigan, believing that the case involved a federal question in light of plaintiff’s answers to written discovery questions. About one year later, upon plaintiff’s motion to remand, the federal district court determined defendant’s removal of the case had been improper and remanded the case back to the trial court.

In order to effectuate the remand, the federal Clerk filed a Notice of Remand to the 16th Judicial Circuit Court on September 29, 2015.<sup>1</sup> The federal court’s Notice reflects that “certified copies of the Order of Remand and the [federal] Court’s docket sheet” were provided to the 16th

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<sup>1</sup> We take judicial notice of the federal court’s Notice, see MRE 201(b), (c), and (e), and recognize that the federal court Clerk complied with 28 USC 1447(c) by mailing “a certified copy of the order of remand . . . to the clerk of the State court.” At that point, the state court regained jurisdiction to “proceed with [the] case.” *Id.*

Judicial Circuit Court. The Notice further asks the recipient to “[p]lease acknowledge receipt of these documents by returning a time-stamped copy of this Notice to” the federal Clerk’s Office.

Yet, the trial court’s docket entries reflect the federal district court’s remand order and Notice were never filed in the trial court. Moreover, the federal court’s docket entries do not reflect that a time-stamped copy of the Notice was returned by the County Clerk’s Office to the federal court’s Clerk as requested in the Notice.

Sometime after the federal district court entered its order, plaintiff contacted the County Clerk’s office to follow up and was informed that, upon receipt of the federal court’s remand order, the case would be rescheduled and could continue.

More than three years passed before plaintiff filed a motion to “restore the case and set a scheduling order” in the trial court. Plaintiff’s motion indicated that “[t]he failure to restore the case to the trial docket was apparently the result of an administrative or clerical oversight.”<sup>2</sup> Plaintiff asked that the case be “restored to the trial docket and a new scheduling order . . . be entered.” Plaintiff attached a copy of the federal court’s remand order, but failed to attach the federal court’s Notice or to cite any legal authority in support of his request.

Defendant opposed plaintiff’s motion as untimely, adding that plaintiff had failed to cite any authority in support of his request. In particular, defendant argued that plaintiff’s request was untimely under MCR 2.612 because the matter had not been pursued within that rule’s one-year timeframe. Defendant also argued that the court should dismiss the case for lack of progress under MCR 2.502. And defendant argued that plaintiff’s claims were barred by laches. Defendant explained it suffered prejudice in its ability to defend itself by plaintiff’s delay in seeking reinstatement and a scheduling order. Defendant had been sold twice, it lacked records related to plaintiff’s claims, and, in fact, no longer employed anyone with knowledge of the pertinent facts. Moreover, defendant’s initial attorney, who was familiar with the facts, retired in 2017.

After holding a hearing, the trial court issued an opinion and order denying plaintiff’s motion. The trial court noted that plaintiff had not provided any support for his motion and that defendant’s arguments, while not dispositive, supported denying plaintiff’s motion.

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<sup>2</sup> We recognize that the Macomb County Clerk’s Office experienced widely publicized mismanagement after a newly-elected Clerk assumed that role in 2017. However, in this case, it is unclear whether the federal court’s Notice reached its intended destination after purportedly being mailed. “The proper addressing and mailing of a letter creates a legal presumption that it was received.” *Stacey v Sankovich*, 19 Mich App 688, 694; 173 NW2d 225 (1969). As previously mentioned, the circuit court docket entries in this case fail to reflect receipt of the federal court’s Notice and remand order. Correspondingly, the federal court’s docket entries reflect no response to the federal Clerk’s request for the County Clerk to return a time-stamped copy of that Notice.

In its opinion and order, the trial court rejected defendant's contention that MCR 2.612 applied, noting that there was no judgment at issue. The court then held:

Plaintiff has provided no evidence that his failure to reinstate the case in 2015 was the fault of anyone but himself. The Court has no record of having been presented with the Order granting remand to this Court, and Plaintiff has not even alleged that he presented such an Order to the Court.

The trial court also rejected defendant's contention that dismissal under MCR 2.502 was appropriate. Nevertheless, the trial court found the rule's timeframe instructive, and concluded that plaintiff failed to present "good cause" for reinstating the matter. Thereafter, the trial court ruled that laches barred plaintiff's relief. The court summarized its ruling:

Plaintiff has not satisfied the Court that there is any clerical mistake requiring correction by the Court, Plaintiff has not represented any good cause for this Court to reinstate this case after a three[-]year delay, and Plaintiff's request is inequitable given the amount of time and activity which has taken place since Plaintiff should have pursued prosecution of its case after it was remanded to this Court.

The trial court then closed the case.

Plaintiff timely moved for reconsideration. For the first time, plaintiff mentioned 28 USC 1447(c), and explained "[t]his is where the procedure failed in some way in the present case." Plaintiff then asserted that the trial court had incorrectly relied on MCR 2.612 and MCR 2.502 and the equitable doctrine of laches in denying plaintiff's motion to restore the case. The trial court denied plaintiff's motion, noting that it had expressly stated in its earlier opinion that it was not relying on the relevant court rules in denying plaintiff's motion and that plaintiff's assertion that defendant was barred from equitable relief under the doctrine of "unclean hands" lacked merit.

This appeal followed.

## II. DISCUSSION

"[A] default abuse of discretion standard of review is an assumed or assigned standard of review unless the law instructs otherwise." *Shulick v Richards*, 273 Mich App 320, 324-325; 729 NW2d 533 (2006). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Cadwell v City of Highland Park (On Remand)*, 324 Mich App 642, 649; 922 NW2d 639 (2018) (quotation marks omitted).

Plaintiff first asserts the trial court erred in relying on MCR 2.612 to deny plaintiff's motion. The text of MCR 2.612(A)(1) allows "[c]lerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party and after notice, if the court orders it." Similarly, MCR 2.612(C)(1) allows a trial court to relieve a party from a "final judgment, order, or proceeding," if the party can demonstrate one of several grounds defined under rule. However, in its opinion and order denying plaintiff's motion to restore the case, the trial court expressly stated that MCR 2.612 did not apply to this case. And, in its opinion and order denying plaintiff's motion for reconsideration, the trial court expressly agreed with plaintiff's assertion that MCR

2.612 was inapplicable to the case and restated that it had not relied on MCR 2.612 when denying plaintiff's motion. Therefore, we reject plaintiff's argument.

Plaintiff next asserts the trial court erred in relying on MCR 2.502 to deny plaintiff's motion. Under MCR 2.502(A)(1), the trial court can—on a motion from a party or on its own initiative—dismiss a case for lack of progress within a period greater than 91 days. The court rule requires the parties be provided with notice of the impending dismissal and the opportunity to show progress has been made or “that the lack of progress is not attributable to the party seeking affirmative relief.” MCR 2.502(A)(1). If the court dismisses the case under MCR 2.502, a party may move for reinstatement of the action “for good cause[.]” MCR 2.502(C). Again, the trial court determined MCR 2.502 was inapplicable because the case had never been dismissed for lack of progress, and, thus, was not subject to reinstatement under MCR 2.502(C).

Nevertheless, the trial court looked to MCR 2.502(C) for instruction. The trial court found parallels between plaintiff's motion and a motion to reinstate a case under MCR 2.502(C). The trial court noted that plaintiff had not pursued his claims for over three years and had not shown any good cause concerning why he should be allowed to press his claims or reinstate the case after such an extended period. In particular, the trial court characterized plaintiff's good cause as “the parties to this action remain entitled to a resolution of the issues presented in this matter.” Because “so much time has elapsed in which Plaintiff opted not to pursue resolution of the issues presented in this matter,” the trial court concluded no good cause had been presented.

But, plaintiff's proffered reason for “[t]he failure to restore the case to the trial docket was apparently the result of an administrative or clerical oversight,” not his entitlement to resolution of the matter. Furthermore, the process of restoring jurisdiction to the state circuit court after this case was removed to federal court by defendant was designed to be automatic upon entry of the federal court's remand order and mailing of the federal Clerk's Notice. 28 USC 1447(c). Plaintiff played no role in this process. *Id.* Indeed, plaintiff contacted the County Clerk's Office regarding the procedure for re-opening the case and was assured that the County Clerk's Office would “reset” the case upon receipt of the federal court's remand order. However, it now appears that the trial court never received the federal court's remand order and Notice. For this reason, the trial court also rejected plaintiff's contention that there was a clerical error on the part of its Clerk's Office in failing to reopen the matter. But plaintiff is not responsible for a delivery failure by the US Postal Service. And, even assuming this were true, it was the federal Clerk's mailing of the order that restored the trial court's jurisdiction, *id.*, not the County Clerk's Office receipt.

While plaintiff labeled his motion as one to restore the case and set a scheduling order, the trial court's jurisdiction was restored by the actions of the federal court and its Clerk. See *Lieberman v Orr*, 319 Mich App 68, 77 n 4; 900 NW2d 130 (2017) (quotation marks and citations omitted) (“A court is not bound by what litigants choose to label their motions because this would exalt form over substance. Rather, courts must consider the gravamen of the . . . motion based on a reading of the document as a whole.”). And, what plaintiff appropriately sought was a scheduling conference. MCR 2.401(A).

Finally, plaintiff next asserts the trial court erred by finding that restoring the case would be inequitable under the equitable doctrine of laches. We agree.

We review de novo a trial court's decision to apply the doctrine of laches, and its findings of fact in support of that decision for clear error. *Charter Twp of Shelby v Papesh*, 267 Mich App 92, 108; 704 NW2d 92 (2005). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007) (quotation marks omitted).

The doctrine of laches "requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant." *Williamstown Twp v Sandalwood Ranch, LLC*, 325 Mich App 541, 553; 927 NW2d 262 (2018) (quotation marks omitted). To be entitled to relief under the doctrine of laches "the complaining party must establish prejudice as a result of the delay. Proof of prejudice is essential." *Id.* (quotation marks omitted). "A party guilty of laches is estopped from asserting a right it could have and should have asserted earlier." *Home-Owners Ins Co v Perkins*, 328 Mich App 570, 589; 939 NW2d 705 (2019) (quotation marks omitted).

Plaintiff asserts the trial court erroneously found defendant had been prejudiced by the delay. Defendant provided evidence demonstrating that defendant's assets had been sold during the period of plaintiff's delay and defendant no longer had access to witnesses and documentary evidence that would support its defenses against plaintiff's claims. But, given that the statute of limitations had not expired on all of plaintiff's claims and that plaintiff could continue to pursue at least one of its claims against defendant, we cannot comprehend how defendant was prejudiced by plaintiff's delay. Moreover, defendant candidly recognized that it retained any liabilities during the sale process, presumably including this lawsuit. As prejudice is a required element of laches, the trial court clearly erred in dismissing plaintiff's case.

Reversed and remanded for further proceedings consistent with this opinion.

We do not retain jurisdiction.

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