

STATE OF MICHIGAN  
COURT OF APPEALS

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LAURIE DECKER and MICHAEL DECKER,  
Plaintiffs-Appellants,

UNPUBLISHED  
September 7, 2001

V

No. 222271  
Tuscola Circuit Court  
LC No. 97-016180-NO

FERRELLGAS, INC. and SCOTT HETZNER,  
Defendants-Appellees,

and

FRICK COMPANY,  
Defendant.

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Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Plaintiffs Laurie Decker and Michael Decker appeal as of right from the trial court's order granting summary disposition to defendants Ferrellgas, Inc. and Scott Hetzner.<sup>1</sup> We vacate the trial court's order and remand for further proceedings.

Plaintiffs argue on appeal that the trial court abused its discretion in denying their motion for an adjournment of the hearing on defendants' motion for summary disposition after plaintiffs secured new counsel. A motion for an adjournment must be based on good cause, and a court, in its discretion, may grant an adjournment to promote the cause of justice. MCR 2.503; *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991). We review a trial court's decision on a motion for adjournment for an abuse of discretion. *Id.* An abuse of discretion is found when an unprejudiced person, considering all the facts on which the trial court based its decision, concludes that the decision cannot be justified. *Safeco Ins Co v Mindell, Panzer, Mulcahy & Malin, PC*, 235 Mich App 226, 228; 596 NW2d 238 (1999).

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<sup>1</sup> Defendant Frick Company was voluntarily dismissed by plaintiffs.

Here, plaintiffs' first attorney moved to withdraw representation on the basis that "irreconcilable differences had arisen . . . regarding direction and control of the litigation." At the April 23, 1999 hearing, the trial court granted the motion and advised plaintiffs to obtain new counsel within thirty days or appear pro se to prosecute the case. On May 3, 1999, defendants filed their motion for summary disposition and the motion was noticed for hearing on June 25, 1999. Plaintiffs' new attorney contacted defense counsel on May 20, 1999, to request an adjournment of the hearing on defendants' motion, and defense counsel informed him in a letter dated June 1, 1999, that they would not agree to an adjournment. Plaintiffs' new attorney entered an appearance on June 18, 1999, and moved for a two-week adjournment of the hearing on defendants' motion. At the summary disposition hearing, the trial court heard argument on plaintiffs' motion for an adjournment. After referencing MCR 2.503(B)(1), the court found that there was no good cause shown.<sup>2</sup> The court denied the motion for adjournment, granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), and dismissed plaintiffs' claims with prejudice.

This Court has found that at least three factors should be considered in determining whether to grant or deny a motion for an adjournment: numerous past continuances, failure of the movant to exercise due diligence, and lack of any injustice to the movant. *Rosselott v Muskegon Co*, 123 Mich App 361, 371; 333 NW2d 282 (1983); see also *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1991); *Hackett v Conner*, 58 Mich App 202, 206; 227 NW2d 292 (1975). Here, there were no prior adjournments, although plaintiffs did request a postponement of a scheduled mediation and the parties so stipulated. With regard to due diligence, the record indicates that plaintiffs' new counsel was involved in the case within the thirty-day period ordered by the trial court. However, counsel did not enter an appearance within that time frame and was not able to prepare to oppose defendants' motion for summary disposition because he did not receive the file from plaintiffs' former attorney until a week before the hearing.<sup>3</sup> These facts are distinguishable from those in *Wykoff v Winisky*, 9 Mich App 662; 158 NW2d 55 (1968), on which defendants rely. In *Wykoff*, the defendants made no effort to engage replacement counsel for approximately three and a half months after the withdrawal of their first counsel. *Id.* at 668. Then, after retaining replacement counsel one week before trial and obtaining a one-day adjournment the day of trial, defendants agreed to replacement counsel's withdrawal the next day and requested what would have been the fourth adjournment in the case. *Id.* at 665-666. This Court stated that the trial court "had a substantial basis for concluding, . . . that the [defendants] did not act with reasonable diligence in obtaining counsel," and found that the trial court did not abuse its discretion in denying defendants' motion for another adjournment. *Id.* at 668. Here, there was no similar basis for concluding that plaintiffs did not act with reasonable diligence.

Further, the trial court's denial of plaintiff's motion for an adjournment in this case harmed plaintiffs considerably more than defendants would have been prejudiced had it been

<sup>2</sup> The court stated, "[T]here's no good cause shown here. I don't have to say anything more."

<sup>3</sup> Plaintiffs' attorney stated at the hearing on his motion for adjournment that plaintiffs had requested the file from their former attorney prior to retaining replacement counsel. The record is not clear with regard to why the file was not transferred earlier.

granted. *Hackett, supra* at 206-207. There was no showing that a two-week adjournment on defendants' motion for summary disposition would affect the trial date, which was set for October. However, because the adjournment was not granted, plaintiffs could not effectively defend against the motion for summary disposition, and the court's grant of summary disposition and dismissal with prejudice of plaintiffs' claims put an end to the case. In view of the circumstances of this case and this state's policy favoring the meritorious determination of issues, *Tisbury, supra* at 21, denial of the motion to adjourn was an abuse of discretion.

We note that plaintiffs also ask us to address the merits of the trial court's summary disposition ruling, taking into consideration the arguments and documentary evidence plaintiffs submitted with their motion for reconsideration. Issues not properly addressed by the trial court are not preserved for review. *Koster v June's Trucking*, 244 Mich App 162, 168; 625 NW2d 82 (2000). Here, the trial court denied plaintiffs' motion for reconsideration after "review[ing] the file and the briefs previously submitted." Because there is no indication that the trial court considered plaintiffs' arguments or documentary evidence submitted with their motion for reconsideration, we conclude that plaintiffs' arguments in this regard are not preserved and we decline to address them. On remand, the plaintiffs are entitled to a reasonable period of time to file pleadings that address the merits of defendants' motion for summary disposition.

We vacate the order granting summary disposition to defendants and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Jeffrey G. Collins  
/s/ Jessica R. Cooper