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STATE OF MICHIGAN

COURT OF APPEALS

LINDA COMER,

Plaintiff-Appellant,

v

ALDI INC., ALDI INC. (MICHIGAN), and ALDI 1200 SOUTHFIELD ROAD, LINCOLN PARK, MICHIGAN 48146

Defendants-Appellees.

UNPUBLISHED
October 20, 2026
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No. 376835
Wayne Circuit Court
LC No. 23-009648-NO

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing this action with prejudice. We vacate that order and remand for further proceedings.

I. FACTUAL BACKGROUND

Plaintiff alleged that she slipped on an unknown substance while shopping at an Aldi store in Lincoln Park on July 27, 2020, injuring her back, neck, and shoulder. Three years later, she filed this action asserting claims of premises liability and negligence. Defendants denied liability.

The case soon developed discovery problems. The trial court's initial scheduling order set deadlines for witness lists, discovery, and case evaluation, and warned that noncompliance could result in sanctions. After plaintiff failed to provide her initial disclosures, the parties stipulated to an order requiring her to do so within 14 days of February 7, 2024. The parties also agreed to extend the witness-list and discovery deadlines. Plaintiff filed her initial disclosures and witness list on March 20, 2024, after the compelled deadline, but neither identified any specific medical provider or other individual with discoverable information supporting her claims.

Discovery did not improve from there. Defendants began taking plaintiff's deposition by Zoom on June 28, 2024, but, according to defendants, the deposition ended about halfway through when plaintiff either turned off her telephone or lost power. She did not return to the Zoom conference or answer calls from her attorney. Defendants also maintained that plaintiff had not

answered their written discovery requests and that they were unable to reschedule the continued deposition.

In August 2024, defendants moved to compel plaintiff to complete her deposition and answer their interrogatories and requests for production. The trial court granted the motion and ordered plaintiff to answer the outstanding written discovery within 14 days and complete her deposition within 21 days, while again extending the case schedule. Plaintiff did not appear for the continued deposition noticed for October 2, and defendants maintained that she still had not provided the ordered written discovery. Defendants then moved to dismiss the action. Plaintiff responded that she had participated in her deposition and that dismissal was too severe, but she did not explain her failure to complete the deposition or provide the ordered discovery. The court denied the motion without explanation.

By January 2025, the discovery remained outstanding. Defendants sought a status conference, and the court ordered counsel to appear in person, warning that a failure to appear could result in dismissal, default, or monetary sanctions. The conference was ultimately rescheduled for February 21, 2025.

Plaintiff died on January 2, 2025. At the February 21 conference, plaintiff's counsel informed the court of her death and explained that her family was establishing a probate estate. The trial court later found that counsel arrived more than an hour late and had not disclosed plaintiff's death before the conference. The court stayed the case through May 2 to permit an estate to be opened and a personal representative to be appointed. Plaintiff's sister, Ravetta Christina Crawford, was appointed personal representative on March 3, 2025.

Plaintiff's counsel did not appear for the May 2 conference. The court lifted the stay, returned the case to the active docket, and required plaintiff's counsel to move or stipulate to substitute the estate and its personal representative within seven days. The court also set deadlines for the parties to identify and complete the outstanding discovery. It ordered counsel and Crawford to appear in person on May 16. Once again, the order warned that a failure to appear could result in dismissal, default, or monetary sanctions.

At 8:40 a.m. on May 16, 2025, approximately 20 minutes before the scheduled conference, plaintiff's counsel moved for substitution. The motion explained that Crawford had been appointed personal representative and asked the court to substitute the proper party so the action could proceed under MCR 2.202(A). The exhibit attached to the motion was a notice to creditors identifying Crawford as personal representative, rather than the letters of authority.[1]

Counsel appeared for the May 16 conference and spoke with the court in chambers. According to the court, counsel indicated that the parties intended to dismiss the case, and the court directed them to file a stipulated order within seven days. The parties prepared a proposed order

[1] Plaintiff's motion also advanced an unusual argument concerning responsibility for substitution. Although the motion first stated that MCR 2.202 placed the relevant obligation on "counsel for the deceased," it then asserted that "the onus" was on defendants' counsel both to file the notice of death and to move for substitution within 91 days.

dismissing the action without prejudice and providing that defendants would waive any statute-of-limitations defense if the action were refiled. Both attorneys electronically signed the proposed order. The record does not show that it was submitted within the seven days directed by the court, although plaintiff's counsel later asserted that it was submitted on July 1 and attached a copy bearing a rejection stamp to the motion for reconsideration.

On July 1, 2025, the trial court dismissed the action with prejudice on its own initiative. The court relied on counsel's failure to file a notice of death or seek substitution within the applicable time frames, plaintiff's refusal to engage in meaningful discovery, and counsel's failure to appear when ordered to do so. The following day, counsel moved for reconsideration in plaintiff's name, arguing that the 91-day substitution period under MCR 2.202 did not begin until a formal notice of death was filed. Counsel also pointed to the previously filed substitution motion and the parties' agreement to dismiss the case without prejudice with a waiver of the limitations defense.

The trial court denied reconsideration on August 4, 2025. It recounted plaintiff's untimely initial disclosures, her failure to answer written discovery or complete her deposition, and the repeated extensions of the case schedule. It also emphasized counsel's late arrival at the February 21 conference, the delay in disclosing plaintiff's death, counsel's failure to appear on May 2, the timing of the substitution motion, and the failure to file the stipulated dismissal within the period directed by the court. The court concluded that dismissal with prejudice was warranted by the multiple violations of the court rules and its orders concerning discovery, as well as a lack of prosecution predating plaintiff's death. This appeal followed.

II. ANALYSIS

A. SUBSTITUTION OF PARTY

As a preliminary matter, we again highlight that plaintiff died while this action was pending. The trial court did not enter an order substituting Crawford, the personal representative of plaintiff's estate, as plaintiff. That omission does not deprive this Court of jurisdiction because an appeal from a decision concerning substitution is a continuation of the underlying action. *Bradley v Progressive Marathon Ins C*o, 345 Mich App 126, 132 n 3; 3 NW3d 559 (2022). Accordingly, we may consider the merits of this appeal notwithstanding the absence of an order substituting Crawford as plaintiff.

B. STANDARD OF REVIEW

We review a trial court's decision to dismiss an action as a sanction for an abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A trial court abuses its discretion when its decision "falls outside the range of reasonable and principled outcomes." *Id*. A court necessarily abuses its discretion when it commits an error of law. *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016). We review de novo the interpretation and application of the court rules. *Vyletel-Rivard v Rivard*, 286 Mich App 13, 20; 777 NW2d 722 (2009).

C. SUA SPONTE DISMISSAL

Plaintiff first argues that the trial court lacked authority to dismiss the action sua sponte. We disagree.

A trial court has inherent authority to sanction litigants and counsel, including by dismissing an action when necessary to protect the integrity of the judicial process and manage its docket. *Maldonado*, 476 Mich at 376, 389. The court rules also authorize dismissal in appropriate circumstances. If a party fails to obey an order requiring discovery, MCR 2.313(B)(2)(c) permits the court to dismiss the action or proceeding, in whole or in part. MCR 2.401(G)(1) provides that a party's or attorney's failure to attend a scheduled conference as directed by the court may constitute a ground for dismissal under MCR 2.504(B). Likewise, MCR 2.504(B)(1) provides that, when a party fails to comply with the court rules or a court order, the court may dismiss the noncomplying party's action either on an opposing party's motion or sua sponte.

Plaintiff relies on *Schell v Baker Furniture Co*, 232 Mich App 470, 478; 591 NW2d 349 (1998), aff'd 461 Mich 502 (2000), in which this Court stated that the version of MCR 2.504(B) then in effect did not permit sua sponte dismissal. But MCR 2.504(B)(1) was amended after *Schell* and now expressly authorizes a trial court to act sua sponte. Plaintiff's reliance on *Schell* is therefore misplaced. The trial court had authority to dismiss the action without a renewed motion from defendants. Whether dismissal with prejudice was a proper exercise of that authority is a separate question, which we will address below.

D. DISMISSAL WITH PREJUDICE

Plaintiff next argues that the trial court abused its discretion by dismissing the action with prejudice without adequately considering the relevant circumstances and available lesser sanctions. We agree.

"Our legal system favors disposition of litigation on the merits." *Vicencio v Ramirez*, 211 Mich App 501, 507; 536 NW2d 280 (1995). Accordingly, "[d]ismissal is a drastic step that should be taken cautiously." *Donkers v Kovach*, 277 Mich App 366, 369; 745 NW2d 154 (2007) (quotation marks and citation omitted). Before imposing that sanction, the trial court must "carefully evaluate all available options on the record" and determine that dismissal is "just and proper" under the circumstances. *Vicencio*, 211 Mich App at 506. The record must therefore reflect that the court considered the relevant factors and its available options when selecting an appropriate sanction. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 86-87; 618 NW2d 66 (2000). The relevant, nonexhaustive list of factors includes:

> (1) whether the violation was wilful [sic] or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. [*Vicencio*, 211 Mich App at 507.]

A trial court need not mechanically recite each factor or first impose progressively harsher sanctions. *Bass v Combs*, 238 Mich App 16, 26-27, 35; 604 NW2d 727 (1999), overruled in part

on other grounds by *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618; 752 NW2d 37 (2008). However, the record must contain some indication that the trial court itself considered the pertinent circumstances and available alternatives. When the trial court fails to conduct the required on-the-record analysis, the proper course is to remand for the trial court to determine in the first instance whether dismissal is an appropriate sanction. See *Gueye v State Farm Mut Auto Ins Co*, 343 Mich App 473; 997 NW2d 307 (2022) (remanding for consideration of the applicable factors bearing on dismissal); *Brenner v Kolk*, 226 Mich App 149 (1997) (remanding for determination of the appropriate sanction after concluding that the stated basis for dismissal was improper).

Here, the record leaves little doubt that substantial sanctions were warranted. Before plaintiff died, she filed her initial disclosures only after entry of an order compelling them and approximately one month after the court-ordered deadline. She never answered defendants' written discovery, never completed her deposition, and did not comply with the August 29, 2024 order compelling both. After plaintiff's death, counsel arrived more than one hour late for the February 21 conference, failed to appear at the May 2 conference, missed the deadline imposed by the May 2 substitution order, and failed to submit the promised stipulated dismissal within the time directed by the court. Meanwhile, defendants lacked the discovery necessary to investigate plaintiff's claimed injuries and incurred the expense of filing motions to obtain basic information.

The trial court afforded plaintiff and her counsel repeated opportunities to comply. It denied defendants' November 2024 motion to dismiss, extended the scheduling dates, stayed the proceedings to allow appointment of a personal representative, restored the action to the active docket, and entered additional orders designed to secure substitution and discovery. Several orders warned that further noncompliance could result in dismissal, default, or monetary sanctions. That history reflects considerable patience and could support a determination that further leniency would not secure compliance.

Even so, prior opportunities to comply are not necessarily the same as consideration of alternative sanctions. Most of the measures identified by defendants were scheduling accommodations, compliance directives, or warnings, rather than sanctions that the court selected and found ineffective. The record therefore may establish why some further consequence was necessary, but it does not reveal why dismissal with prejudice, rather than a lesser sanction, was just and proper.

The July 1 order dismissing the action identified plaintiff's discovery failures and counsel's missed appearances and substitution-related noncompliance. It did not identify any alternative sanction or explain why an alternative would be inadequate. And because the relevant conferences were not recorded, the record contains no oral findings or reasoning that might supplement the written order.

The order denying reconsideration provides a more complete account of the procedural history, but it does not supply the missing analysis. The court again catalogued the delays and failures to comply that it believed warranted a sanction. It did not consider on the record whether a lesser sanction could adequately address those failures while allowing the action to be resolved on its merits. A recitation of the reasons why a sanction is warranted does not, by itself, explain why the harshest available sanction is just and proper.

Moreover, one component of the trial court's reasoning rested on a mistaken understanding of MCR 2.202(A)(1)(b). To the extent the court deemed the May 16, 2025 substitution motion untimely because more than 91 days had elapsed since plaintiff's death, the relevant period instead begins upon the filing and service of a statement of death. Even treating the February 21, 2025 stay order as the requisite statement, counsel filed the substitution motion 84 days later. Counsel nevertheless failed to file a prompt notice of death under MCR 2.202(A)(2) and missed the shorter deadline imposed by the May 2 order. And because substitution remains discretionary, the timeliness of the motion did not require the trial court to grant it. *Bradley*, 345 Mich App at 135-136.

Regardless, neither the trial court's error concerning the 91-day period nor our decision to remand excuses the sustained noncompliance by plaintiff and her counsel. The record may ultimately support dismissal with prejudice, and the trial court need not impose a succession of lesser sanctions before reaching that result. But it must evaluate the available alternatives on the record and explain why dismissal with prejudice is just and proper under the circumstances. *Vicencio*, 211 Mich App at 506. Because the record does not show that the trial court made that discretionary determination, remand is required. We therefore vacate the dismissal order and remand for the trial court to reconsider the appropriate sanction. On remand, the court may consider the entire history of the proceedings, including plaintiff's discovery violations, counsel's conduct following plaintiff's death, the court's prior efforts to secure compliance, and the prejudice to defendants. We express no opinion regarding which sanction the court should impose. We direct only that the court make a record demonstrating that the sanction selected is just and proper under the circumstances.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado