

STATE OF MICHIGAN
COURT OF APPEALS

MCLAUGHLIN & ASSOCIATES,

UNPUBLISHED
May 27, 1997

Plaintiff/Counter-Defendant/Appellant,

v

No. 189410

Wayne Circuit Court

NORTH CENTRAL ENGINEERING,

LC No. 94-426111-CK

Defendant/Counter-Plaintiff/
Third-Party Plaintiff/Appellee,

v

THOMAS MCLAUGHLIN,

Third-Party Defendant/Appellant.

Before: Cavanagh, P.J., and Reilly and White, JJ.

MEMORANDUM.

In this dispute regarding commissions owed under an agency agreement and a stock repurchase option, plaintiff and third-party defendant (collectively, McLaughlin), appeal from an order of dismissal and subsequent denial of a motion to reinstate. We reverse.

McLaughlin argues that the circuit court erred in dismissing this case. We agree. We review a trial court's decision to dismiss on procedural grounds, and to deny reinstatement, for an abuse of discretion. *Gerbis v White Motor Credit Corp*, 165 Mich App 372, 373-374; 418 NW2d 468 (1987). This case was apparently dismissed because no judgment had been entered on the mediation awards which had been accepted by plaintiff and defendant. The record shows, however, that McLaughlin submitted a proposed judgment, to which defendant objected, and the documents sent to the parties by the mediation tribunal stated that the circuit court would take up matters relating to entry

of judgment at the scheduled settlement conference. The affidavit of McLaughlin's attorney supports this expectation, since the attorney averred that he was told by the circuit court's clerk that no motion was required to settle the judgment and that the circuit court would settle the judgment and order at the scheduled settlement conference.

McLaughlin and defendant agree that they did not learn that the case had been dismissed until their attorneys appeared at the settlement conference as scheduled. On the whole record, it appears that this case was inadvertently dismissed, without adequate notice to the parties. Where a party has not received adequate notice before dismissal of a lawsuit, reinstatement of the case is a matter of right. *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 506; 536 NW2d 280 (1995). The circuit court therefore abused its discretion in denying McLaughlin's motion for reinstatement.

We decline to address the question whether the circuit court erred regarding the mediation evaluation and its effect on the third-party claims between defendant and Thomas McLaughlin. Because the circuit court never entered a judgment, this issue is not ripe for review. *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996).

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

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Helene N. White