

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE E. MARSH,

Plaintiff-Appellant,

v

DAVID P. DONETH, FENTON HILL, INC., AUTO
CITY SERVICE CENTER, B.R.C. ENTERPRISES,
INC., MARETH, LTD., DAVID P. DONETH a/k/a
PETE DONETH, d/b/a/ MAPLE AND CROOKS
MOBIL and MAPLE POINT SUNOCO, and
DAVID DONETH, Trustee of the David P. Doneth
Family Trust,

Defendants-Appellees.

UNPUBLISHED

February 24, 1998

No. 201503

Genesee Circuit Court

LC No. 95-39849 CB

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion to dismiss pursuant to MCR 2.313(B)(2)(c). We affirm.

Plaintiff's sole argument on appeal is that the trial court abused its discretion in ordering dismissal as a sanction for discovery violations. We review the trial court's decision to impose such sanctions under an abuse of discretion standard, *Beach v State Farm Mutual Ins Co*, 216 Mich App 612, 618; 550 NW2d 580 (1996), and affirm.

A trial court is authorized to impose sanctions where a party fails to obey a discovery order. *Barlow v Crane-Houdaille, Inc*, 191 Mich App 244, 251; 477 NW2d 133 (1991). The court may impose sanctions as it deems just. MCR 2.331(B)(2). A sanction of dismissal is a harsh remedy and should be made cautiously. *Barlow, supra*. Before imposing sanctions, a court should consider several factors, including whether the violation was wilful or accidental, the party's history of refusing to comply with discovery requests or disclosure of witnesses, prejudice to the party, actual notice to the opposing party, and any attempt to make a timely cure. *Colovos v Dep't of Transportation*, 205 Mich App

524, 528; 517 NW2d 803 (1994). The trial court in the present case considered the relevant facts and circumstances and determined that, given the length of delay and nearness of motion, mediation and trial deadlines, dismissal of plaintiff's complaint was the most appropriate remedy.

We agree with the trial court that plaintiff was wilful in failing to provide discovery. Plaintiff had volumes of discovery which he used at trial in a companion case, and yet he failed to produce it in the case at bar. Plaintiff failed to file witness and exhibit lists in accordance with the trial court's scheduling order, and failed to comply with an order giving him sixty days to appear at his deposition. Although defendants' motion to dismiss was adjourned on three separate occasions to permit plaintiff to comply with discovery requests, plaintiff had still not appeared at his deposition or filed witness or exhibit lists at the time of oral arguments on the motion (two months after the original motion was filed). We find it difficult to believe that defendants were not prejudiced by plaintiff's continued discovery violations. A party cannot file a lawsuit and then refuse to comply with discovery orders. Accordingly, we find that the trial court did not abuse its discretion in dismissing plaintiff's lawsuit.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Michael R. Smolenski