

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

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JOHN ALBERT LJUNGVALL and DIANE  
LJUNGVALL DELISO,

UNPUBLISHED  
April 25, 2000

Plaintiffs-Appellants,

v

No. 207192  
Wayne Circuit Court  
LC No. 97-702690-NM

FRANK J. PALAZZOLO and BUFALINO &  
PALAZZOLO, P.C.,

Defendants-Appellees.

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Before: Gribbs, P.J., and Doctoroff and T. L. Ludington\*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendants' motion to dismiss based on failure to comply with a discovery order. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs retained defendants to represent them in an action against an orthotics supplier. They alleged that due to the improper design of a leg brace, Mr. Ljungvall sustained osteomyelitis that resulted in the amputation of his right leg. Plaintiffs brought this legal malpractice action when defendants failed to pursue their claim.

Defendants served plaintiffs with interrogatories regarding expert witnesses shortly after filing their answer. Plaintiffs' initial response indicated that the determination of expert witnesses had yet to be made. Defendants' motion to compel more specific answers was granted, and plaintiffs were given ten days to provide answers. When plaintiffs failed to provide the answers, defendants moved to dismiss.

The day before the hearing on defendants' motion, plaintiffs provided incomplete answers to the interrogatories. At the hearing, the court determined that plaintiffs had no legal expert, and no

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\* Circuit judge, sitting on the Court of Appeals by assignment.

independent medical expert. When the court learned that plaintiffs had not signed the interrogatory answers provided, it granted the motion to dismiss.

Under MCR 2.313(B)(2), if a party fails to obey an order to provide discovery, the trial court may order such sanctions as are just, including the dismissal of the action. A court's decision to impose sanctions will not be reversed on appeal absent an abuse of discretion. *Barlow v John Crane-Houdaille, Inc*, 191 Mich App 244, 251; 477 NW2d 133 (1991). The sanction of dismissal is appropriate where the failure to provide discovery is in violation of a direct order of the court. *Id.* Before dismissing an action on these grounds, the trial court must carefully evaluate all available options before concluding that dismissal is the just and proper sanction. *Hanks v SLB Management, Inc*, 188 Mich App 656, 658; 471 NW2d 621 (1991).

The trial court did not abuse its discretion in granting defendants' motion to dismiss. The record showed that plaintiffs failed to comply with the discovery order, and that they intentionally failed to reveal the lack of expert support for their claim. The court could reasonably conclude that dismissal was a just and proper sanction.

Affirmed.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington