

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA HAGY, as Personal Representative of the
Estate of WILLIAM HAGY, Deceased,

UNPUBLISHED
August 8, 2000

Plaintiff-Appellant,

v

No. 218759
Jackson Circuit Court
LC No. 98-090147-NO

NATIONAL RAILROAD PASSENGERS
CORPORATION a/k/a AMTRAK,
CONSOLIDATED RAIL CORPORATION,
ROBERT ZENZ and NANCY ZENZ d/b/a ZENZ
FARMS and ROGER GOULD,

Defendants-Appellees.

Before: Murphy, P.J., and Kelly and Talbot, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted from a trial court order denying her motion to amend her witness list to add Dr. Steven Newman as an expert witness.. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Parties must file witness lists no later than the time directed by the trial court in a scheduling order; any witness not so listed will be prohibited from testifying at trial except upon good cause shown. MCR 2.401(I). The decision whether to grant or deny a party's motion to amend a witness list is within the trial court's discretion, and will not be overturned by this Court absent an abuse of that discretion. *Carmack v Macomb County Comm College*, 199 Mich App 544, 546; 502 NW2d 746 (1993). We agree with plaintiff that the trial court abused its discretion in denying plaintiff's motion to add Dr. Newman to her witness list merely because she had not complied with the court's pretrial scheduling order.

Before a trial court sanctions a party for failing to timely list an expert witness, such as by barring the witness from testifying, the 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 a party, and actual notice to the opposite party of the witness.

Colovos v Dep't of Transp, 205 Mich App 524; 517 NW2d 803 (1994), aff'd 450 Mich 861 (1995). None of these factors are present here and the trial court should have considered a lesser sanction. Plaintiff filed her witness list in a timely manner, and there was no claim that she had any history of delay or obfuscation of the discovery process. In addition, defendants would suffer no prejudice from the amendment. Plaintiff filed her motion to amend about five weeks *before* defendants were required to file their witness list, and over four months before discovery was set to close. Defendants had ample time in which to conduct discovery regarding Dr. Newman. See *Butt v Giammariner*, 173 Mich App 319; 433 NW2d 360 (1988); *Tisbury v Armstrong*, 194 Mich App 19; 486 NW2d 51 (1991).

Reversed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot