STATE OF MICHIGAN

COURT OF APPEALS

ADELL BROADCASTING CORPORATION, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED January 16, 2001
v JAMES PANAGOS, Defendant/Counter-Plaintiff-Appellant.	No. 216715 Macomb Circuit Court LC No. 98-000197-CZ

JAMES PANAGOS and RUTH PANAGOS, Plaintiffs-Appellants,	
v ADELL BROADCASTING CORPORATION and FRANKLIN Z. ADELL, Defendants-Appellees.	No. 216716 Macomb Circuit Court LC No. 98-000592-CZ

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

In these consolidated cases appellants James and Ruth Panagos appeal as of right from the trial court's order granting appellees' motion for entry of a default judgment and dismissing appellants' separate suit. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

James Panagos worked for Adell Broadcasting Corporation (ABC) pursuant to an employment contract. In January 1997, ABC informed Panagos that his services were no longer

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

required, but that he would continue to be paid until the contract expired in March 1998. In January 1998, ABC filed a complaint seeking a declaration that the employment contract had been terminated properly. In February 1998, appellants filed a countercomplaint and a separate suit alleging, *inter alia*, breach of the employment contract. The trial court entered a stipulated order consolidating the actions.

Over the course of the next several months, although appellants provided some discovery, they failed to appear for depositions and provide other discovery as scheduled. During a period lasting approximately four to six weeks, appellants' own counsel repeatedly tried to contact them regarding discovery, but was unsuccessful. After appellants again failed to appear for depositions by September 28, 1998, as ordered, ABC moved for entry of a default judgment. The trial court granted the motion, finding that appellants had willfully violated discovery orders. The trial court entered a default judgment, dismissed appellants' countercomplaint and separate suit, and assessed costs in the amount of $1,600; this default judgment substantively granted ABC the relief it sought in the declaratory action. Subsequently, the trial court denied appellants' motion for reconsideration. In doing so, the trial court explained that imposing a sanction other than dismissal would have been inappropriate.

II. The Default Judgment

A. Standard Of Review

Appellants argue that the trial court erred by granting appellees a default judgment and dismissing their lawsuit. We review a trial court's decision to enter a default judgment as a sanction for discovery violations for an abuse of discretion.[1]

B. Appropriate Sanctions

A trial court has the explicit authority to enter a default judgment as a sanction for discovery abuses.[2] Because entering a default judgment resolves the underlying legal dispute without a trial, it is a drastic step that should be ordered with caution.[3] Any number of considerations should shape the trial court's conclusion regarding what constitutes an appropriate sanction. These considerations include, but are not limited to:

> (1) whether the violation was wilful or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, . . . (5) whether there exists a history of plaintiff engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure

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[1] *Frankenmuth Mutual Ins Co v ACO, Inc*, 193 Mich App 389, 397; 484 NW2d 718 (1993).

[2] MCR 2.313(B)(2)(c).

[3] See *Frankenmuth*, *supra* at 397.

the defect, and (8) whether a lesser sanction would better serve the interests of justice.[4]

Ultimately, "[t]he sanction of default judgment should be employed only when there has been a flagrant and wanton refusal to facilitate discovery and not when failure to comply with a discovery request is accidental or involuntary."[5]

C. Appellants' Conduct

Appellants' failure to comply with discovery requests, orders compelling discovery, and deposition schedules began shortly after they instituted these actions and lasted until the trial court entered the default judgment. The record indicates that appellants were experiencing health problems, which may have prevented their complete and timely compliance with every discovery order in this case. Nevertheless, they effectively abandoned their duties as parties to this case. They neither attempted to reschedule depositions, nor did they provide the trial court, their attorneys, or opposing counsel with information about their inability to comply with the discovery schedule in advance of any scheduled dates. This was a tremendous, if not insurmountable, obstacle to progress in this case. The trial court gave appellants more than one opportunity to correct their conduct and even denied appellees' request for costs after one hearing. These efforts were to no avail because appellants never corrected their conduct or provided appellees with the discovery materials they sought. Based on these facts, we conclude that the record plainly supported the trial court's finding that appellants willfully failed to comply with the discovery process, which is not an abuse of discretion.[6]

Furthermore, the trial court gave adequate consideration to imposing lesser sanctions and provided a sufficient statement of its reasons for rejecting those sanctions. The trial court's tolerance of appellants' discovery violations did not deprive it of the authority to determine that entry of a default judgment and dismissing appellants' claim was appropriate under the circumstances.[7]

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

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[4] *Dean v Tucker*, 182 Mich App 27, 32-33, 451 NW2d 571 (1990).

[5] *Mink v Masters*, 204 Mich App 242, 244; 514 NW2d 235 (1994) (citations omitted).

[6] See *Edge v Ramos*, 160 Mich App 231, 234-235; 407 NW2d 625 (1987).

[7] MCR 2.313(B)(2)(c); *Bass v Combs*, 238 Mich App 16, 35; 604 NW2d 727 (1999).