

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

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TONJA BARKER,

Plaintiff-Appellant,

v

CITY OF DETROIT, DETROIT POLICE  
DEPARTMENT, DETROIT POLICE CHIEF, and  
OFFICER SNIPES,

Defendants-Appellees.

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UNPUBLISHED

January 26, 2001

No. 218876

Wayne Circuit Court

LC No. 97-737086-CZ

Before: Zahra, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order dismissing her action with prejudice for failing to post a \$2,000 bond to secure defense costs. The circuit court imposed the bond as a sanction for plaintiff's failure to comply with discovery. We affirm.

Plaintiff first argues that the circuit court erred by imposing a sanction against her for abuse of the discovery process. The record reveals that plaintiff effectively failed to appear at her scheduled deposition, failed to appear or participate in mediation and otherwise failed to provide any meaningful discovery for defendants, despite numerous discovery requests and two extensions of the discovery deadline. Based on this record, we cannot find that the circuit court abused its discretion by imposing a reasonable bond as a sanction for plaintiff's failure to comply with discovery. MCR 2.313(D); *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999).

Plaintiff next argues that the circuit court erred by failing to consider her financial ability before ordering that a bond be posted. MCR 2.109(B)(1) requires the court to consider financial ability before requiring a bond pursuant to that rule. However, the requirements of MCR 2.109 do not apply to this case. The circuit court did not impose a bond under MCR 2.109(A) in response to a factually deficient complaint or a questionable theory of recovery. Instead, the circuit court imposed the bond pursuant to its power under MCR 2.313(D), as a sanction for plaintiff's failure to provide discovery.<sup>1</sup> Further, plaintiff made no objection to the amount of the

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<sup>1</sup> Plaintiff also argues that the circuit court erred by dismissing her complaint without addressing the legitimacy of her claims as required by MCR 2.109(B)(1). Again, the requirements of MCR

(continued...)

bond at the time it was ordered. The court required plaintiff to post the bond within 21 days of the court's order. Plaintiff was warned that failure to post the bond would result in dismissal of her claims with prejudice. Plaintiff did not allege a financial inability to post the bond until the 21 day period for obtaining the bond had lapsed and defendant was back before the court asking for a dismissal of plaintiff's claims. Plaintiff did not support her claims of poverty with an affidavit until one week after the circuit court granted the motion to dismiss. Based on these facts, we cannot conclude that the circuit court abused its discretion by failing to consider plaintiff's claim of financial inability to post bond.

Finally, plaintiff argues that the circuit court intended to dismiss her claims without prejudice. It is well established that a court speaks through its written and signed orders. *Tiedman v Tiedman*, 400 Mich 571, 576, 255 NW2d 632 (1977). The circuit court's order requiring a bond provides that "if Plaintiff fails to file the Bond within the 21 day period, this case shall be dismissed with prejudice and without costs." Accordingly, we find no error.

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael R. Smolenski  
/s/ Hilda R. Gage

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(...continued)

2.109 do not apply in this case. Dismissal with prejudice was an appropriate sanction in light of the circumstances presented.