STATE OF MICHIGAN

COURT OF APPEALS

ABDUL AMIR AL-ISAWI and TAKLIF GHAZI AL-ARITHY,

Plaintiffs-Appellants,

V

DANIEL JOSEPH McCANN,

Defendant-Appellee.

UNPUBLISHED
September 21, 2001

No. 223661
Wayne Circuit Court
LC No. 99-906903-NI

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal by right from an order dismissing their third-party no-fault action with prejudice for failure to provide discovery. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"It is within the trial court's discretion to sanction a party for violating the discovery rules." *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 265; 617 NW2d 777 (2000). On appeal, plaintiffs argue that the trial court in this case abused its discretion in dismissing the case with prejudice. Under MCR 2.313(B)(2)(c), a trial court may enter an order dismissing a proceeding when a party fails to obey an order to provide discovery. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). "Severe sanctions are generally appropriate only when a party flagrantly and wantonly refuses to facilitate discovery, not when the failure to comply with a discovery request is accidental or involuntary." *Id.* The factors that should be considered in determining the appropriate sanction include: (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 other party; (4) the length of time before trial that the other party received notice of a witness; (5) whether there is a history of deliberate delay; (6) the degree of compliance with other provisions of the court's discovery orders; (7) whether there was an attempt to timely cure the defect; and (8) whether a lesser sanction would better serve the interests of justice. *Id*. at 26-27, quoting *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).

We find no abuse of discretion on this record. Plaintiffs' obstruction of discovery was not limited to a single instance, but rather plaintiffs' delays and denials of discovery extended throughout the case. Plaintiffs failed to supply full and complete answers to the interrogatories as ordered, and their supplemental answers failed to cure most of the defects. They would not

disclose the nature of their injuries, the names of witnesses, or what serious impairment of body function they were claiming. They failed to show up for court-ordered medical examinations. Because of their absences, defendant incurred in excess of $1,000 in doctors' and translator's fees. In short, plaintiffs' conduct repeatedly frustrated defendant's attempts to discover information vital to a proper defense of his case. The court's less drastic sanction of assessing $1,000 in costs proved unsuccessful. Further, while plaintiffs now claim that they could not afford to pay the court-ordered costs, they did not claim indigency when the court entered the order. Moreover, the costs assessed represented only a portion of the expenses defendant incurred because of plaintiffs' course of conduct. Under these circumstances, we find no abuse of discretion. *Oviedo v Ozierey*, 104 Mich App 428, 435; 304 NW2d 596 (1981).

We affirm.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jessica R. Cooper