

STATE OF MICHIGAN
COURT OF APPEALS

LAMONT LYNAUM,

Plaintiff-Appellee,

V

WILLIE COLEMAN and LORENZO
REYNOLDS,

Defendants-Appellants.

UNPUBLISHED

September 25, 2001

No. 221103

Wayne Circuit Court

LC No. 95-536267-NO

Before: K.F. Kelly, P.J., and Hood and Zahra, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting plaintiff a voluntary dismissal, which imposed specific conditions on the refiling of a subsequent case. On appeal, defendants argue that conditions on a voluntary dismissal must be designed to protect defendants and, further, that a trial court cannot impose conditions on the refiled case. We affirm.

Plaintiff first filed this action against defendants on December 8, 1995, alleging that defendants, both Detroit Police Officers, beat him on his head and body when they arrested him on December 24, 1993. Plaintiff later amended his complaint to allege that the incident took place on December 24, 1992, and thereafter, contended that he was insane for the purposes of tolling the statute of limitations following the incident. The trial court denied defendants' motion for the release of the records of plaintiff's plea related to the arrest, which defendants asserted refuted plaintiff's claim that he was insane.¹ The trial court also denied defendants' motion for summary disposition, determining that plaintiff's sanity was a question of fact for the jury, and denied defendants' request to bifurcate the trial so that the jury would determine the issue of plaintiff's sanity before hearing evidence about the alleged beating. On the date set for trial, plaintiff accused defendants of tampering with plaintiff's witnesses. Over defendants' objections, and instead of granting plaintiff an adjournment, the trial court granted plaintiff's motion for a voluntary dismissal. In its order, the trial court imposed the following conditions on

¹ Defendants filed the same motion before the Detroit Recorder's Court and the United States District Court for the Eastern District of Michigan, where the case was removed in 1996. The recorder's court denied defendants' motion and the case was remanded to state court before the federal court ruled on the issue.

the dismissal: (1) the factfinder in the refiled case shall determine whether plaintiff was insane within the meaning of MCL 600.5851 from the time of the December 24, 1992, incident to December 8, 1994, one year before plaintiff filed the instant action, (2) all discovery, including depositions, in the instant case may be used as if taken in the refiled case, (3) all rulings and orders in the instant case shall be deemed made in the refiled case, (4) all pleadings in the instant case need not be refiled and, instead, shall be deemed to have been made in the refiled case, (5) the refiled case will not be mediated unless the parties so agree, (6) further discovery shall be permitted in the refiled case, (7) the issue of costs to the prevailing party is preserved for the refiled case, and (8) the trial court's order prohibiting defendants from contacting plaintiff's witnesses shall remain in full force and effect. The trial court called the allegations of witness tampering "serious," and imposed an order prohibiting defendants from contacting plaintiff's witnesses.

This Court reviews the grant or denial of a voluntary dismissal for an abuse of discretion. *Mleczko v Stan's Trucking, Inc.*, 193 Mich App 154, 155; 484 NW2d 5 (1992); *Rosselott v Muskegon Co.*, 123 Mich App 361, 373; 333 NW2d 282 (1983). An abuse of discretion is found only if an unprejudiced person, upon considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *Mleczko, supra* at 155; *Rosselott, supra* at 373. Accordingly, this Court will not set aside a trial court's grant of a voluntary dismissal unless the trial court's action was without justification. *McKelvie v Mount Clemens*, 193 Mich App 81, 86; 483 NW2d 442 (1992). The Michigan Court Rules permit a trial court to impose terms and conditions on dismissals without prejudice. Rule 2.504, which governs the dismissal of actions, states that an action may be dismissed "by order of the court on terms and conditions the court deems proper." MCR 2.504(A)(2). However, defendants argue that such conditions must be designed to protect the defendant, not the plaintiff.

This Court has stated:

[I]n exercising [its] discretion [to grant or deny a voluntary dismissal] the trial judge is to weigh the competing interests of the parties along with any resultant inconvenience to the court from further delays. Normally, such a motion should be granted unless defendant will be legally prejudiced as a result. As the purpose of [MCR 2.504(2)] is to protect defendant from the abusive practice of dismissal after much time and effort has been put into a lawsuit, any dismissal should be on terms and conditions which protect defendant. [*Rosselott, supra* at 374, quoting *African Methodist Episcopal Church v Shoulders*, 38 Mich App 210, 212; 196 NW2d 16 (1972) (internal citations omitted).]

Although Michigan case law provides little guidance for the situation in this case, where the trial court granted a plaintiff's request for a voluntary dismissal in the face of allegations of a defendant's misconduct, this Court has repeatedly looked to federal law for guidance in interpreting MCR 2.504. See *McKelvie, supra* at 85; *Bruce v Grace Hospital*, 96 Mich App 627, 631; 293 NW2d 654 (1980). The federal courts generally interpret the corresponding federal

rule² to permit dismissals that do not unduly prejudice the defendant. *Bruce, supra* at 631. In determining whether a defendant would be prejudiced by a voluntary dismissal, the federal courts “consider such factors as the defendant’s effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.” *Grover by Grover v Eli Lilly & Co*, 33 F3d 716, 718 (CA 6, 1994).

Although the imposition of fees is the most common condition on a voluntary dismissal, non-monetary conditions, such as that discovery in the dismissed action may be used in the refiled action, are permitted. 3 Michigan Court Rules Practice (4th ed) § 2504.6, pp 48-49. Accordingly, defendants’ argument that the trial court cannot impose conditions on a refiled case is without merit. Furthermore, the instant case should be distinguished from the line of cases recognizing that a dismissal pursuant to MCR 2.504(A)(2) should be on terms that protect the defendant. Plaintiff sought an adjournment in light of allegations that defendants had tampered with plaintiff’s witnesses. The trial court termed these “significant allegations,” and imposed an order prohibiting defendants from contacting plaintiff’s witnesses. In light of the possibility of defendants’ fault regarding the dismissal, we cannot conclude that defendants were prejudiced by the conditions imposed on the dismissal. The conditions that defendants challenge merely operate to put plaintiff and the trial court in the same position as if the case had proceeded. Neither plaintiff nor the trial court need revisit legal issues that were settled in the first action. Furthermore, no issues of fact were ever presented to the factfinder. Accordingly, no issues of collateral estoppel operate to prevent defendants from fully litigating the merits of the case in the refiled action. See *Lumley v University of Michigan*, 215 Mich App 125, 132; 544 NW2d 692 (1996); *VanDeventer v Michigan National Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988).

Defendants’ reliance on *Goodrich v Moore*, 8 Mich App 725; 155 NW2d 247 (1967), for the proposition that a trial court’s rulings on a preliminary motion cannot bind a court in a subsequently filed case, is misplaced. In *Goodrich*, the plaintiff commenced two actions against the defendant. In the first action, the defendant moved for summary disposition and the trial court denied the motion. The action was thereafter dismissed without prejudice, and the plaintiff commenced the subsequent action. When the defendant moved for summary disposition on the same grounds raised in the first action, the trial court granted the motion. The plaintiff appealed, arguing that the trial court was precluded from granting the defendant’s motion based on the

² The federal rule governing voluntary dismissals is Fed R Civ P 41(a)(2).

By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save *upon order of the court and upon such terms and conditions as the court deems proper*. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. [Emphasis added.]

doctrine of res judicata. *Id.* at 726-728. This Court affirmed the trial court, stating that an interlocutory order does not have res judicata effect, and noting that “the denial of a motion for summary judgment does not preclude such a judgment being granted at a later stage in the same case.” *Id.* at 728. *Goodrich* has no bearing on the validity of the trial court’s conditions in the instant case, as no conditions on the voluntary dismissal were identified in *Goodrich*. Furthermore, as *Goodrich* illustrates, defendants can still move for summary disposition in the refiled case. Based on the foregoing, we conclude that the trial court did not err in imposing conditions on the voluntary dismissal that operated to protect plaintiff from prejudice due to defendants’ alleged witness tampering.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Harold Hood

/s/ Brian K. Zahra