

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM G. WIZINSKY,

Plaintiff-Appellant,

V

GENERAL AMERICAN LIFE INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 18, 2001

No. 223204

Oakland Circuit Court

LC No. 93-448541-CZ

Before: White, P.J. and Talbot and E.R. Post*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order dismissing the case for lack of progress. We reverse and remand.

This case proceeded normally for a year and a half, at which time the trial court granted defendant's motion for partial summary disposition. It then stayed all further proceedings while plaintiff sought leave to appeal that ruling. After this Court denied leave, the case sat dormant for over four years until plaintiff moved to have a trial date set. Defendant then moved to dismiss for lack of progress. The trial court granted the motion, concluding that plaintiff had no reasonable excuse for waiting four years to take any further action. We review the court's ruling for an abuse of discretion. *Sands v General Motors Corp*, 155 Mich App 330, 331; 399 NW2d 510 (1986).

We find that the unusual circumstances of this case warrant reversal. First, a party may not move for dismissal under MCR 2.502(A). Dismissal for lack of progress is a ministerial action taken by the court. *Laidler v Nat'l Bank of Detroit*, 133 Mich App 85, 92; 348 NW2d 42 (1984). The rules do not permit dismissal upon motion of a party. In addition, cases are not subject to dismissal for lack of progress where, as here, case evaluation and trial dates have been set. MCR 2.502(A)(2). Finally, we note that the trial court was partially responsible for the delay, given that it erroneously marked the case as having been dismissed on defendant's dispositive motion, thereby preventing the case from ever being set for a new trial date once proceedings in this Court were completed. While we do not condone plaintiff's counsel's conduct in waiting over four years before taking any steps to have the case returned to the trial

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

docket, this case involves a situation in which the parties were waiting for a trial notice which, due to the erroneous docket entry, the court never would have issued.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Michael J. Talbot

/s/ Edward R. Post