

STATE OF MICHIGAN
COURT OF APPEALS

JOEL S. GEHRKE and KIMBERLY S. GEHRKE,

Plaintiffs-Appellants,

v

BOLESLAUS I. STANCZYK and PLUNKETT &
COONEY,

Defendants-Appellees.

UNPUBLISHED

December 28, 2001

No. 225641

Montcalm Circuit Court

LC No. 99-000341-NM

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order dismissing this action for failure to comply with a discovery order. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Stanczyk and his law firm represented plaintiff Joel Gehrke in the defense of a sexual misconduct suit arising out of Gehrke's actions as a district court judge. Plaintiffs asserted that defendants were negligent in their representation where they allegedly settled the action without Gehrke's consent.

In the course of discovery, Joel Gehrke was asked to identify a woman with whom he had a relationship during the course of his judgeship. He refused to identify her, and the trial court granted defendants' motion to compel. The case was dismissed due to plaintiffs' failure to comply with the order.

A trial court is authorized to enter an order dismissing a proceeding against a party who fails to obey an order to provide discovery. MCR 2.313(B)(2)(c); *Thorne v Bell*, 206 Mich App 625, 632; 522 NW2d 711 (1994). This Court will review discovery sanctions for abuse of discretion. *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990).

A motion to compel discovery is a matter within the trial court's discretion, and a decision to grant discovery will be reversed only if there has been an abuse of discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993). Evidence objected to at a deposition on grounds other than privilege is to be taken subject to

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

objection. *Id.*, MCR 2.306(C)(4). When a relevancy objection is made at a deposition the proper procedure is to note the objection and take the deponent's answer subject to the objection. *Linebaugh, supra* at 343.

Plaintiffs argue that the woman's identity was not reasonably calculated to lead to the discovery of admissible evidence. The relationship was raised in the underlying trial. The nature of that relationship was relevant to the question of damage to Gehrke's reputation in the community, for which he sought to recover in this action. The information sought was not privileged. Defendants were entitled to discovery of information that could show that the settlement of the underlying action had little effect on Gehrke's reputation.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham