

STATE OF MICHIGAN
COURT OF APPEALS

BRAD CARLSON and MARY ELLEN BACON,

Plaintiffs-Appellants,

v

CLIFFORD WILCOX and SANDRA WILCOX,

Defendants-Appellees.

UNPUBLISHED
February 22, 2002

No. 227899
Lapeer Circuit Court
LC No. 98-025592-NZ

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition after plaintiffs' expert witness was excluded from testifying. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs brought this action for fraud based on allegations that defendants failed to disclose known defects in a house defendants sold to plaintiffs. Defendants filed their witness list in April 1999, and plaintiffs filed their list in June 1999. One week before trial was scheduled to begin, plaintiffs filed an amended witness list adding an expert witness. The trial court granted defendants' motion in limine to exclude the witness, and granted summary disposition where plaintiffs could not establish a prima facie case without an expert witness to testify as to damages.

Witness lists are an element of discovery. The ultimate objective of discovery is to make available to all parties all relevant facts that might be admitted into evidence. *Grubor Enterprises, Inc v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993). The purpose of witness lists is to avoid trial by surprise. *Id.* This Court will review a trial court's decision to exclude undisclosed witnesses for an abuse of discretion. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 90; 618 NW2d 66 (2000).

Where a discovery sanction of barring an expert witness results in the dismissal of a plaintiff's action, the sanction should be exercised cautiously. *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990). The trial court must give careful consideration to the factors involved and consider all options in determining a just and proper sanction in the context of the case. *Id.*

The trial court did not abuse its discretion in excluding plaintiffs' expert witness. The court found that the late disclosure of the witness would prejudice defendants due to their inability to depose the witness. Where the case had been pending for a considerable time, the court did not abuse its discretion by denying an adjournment to allow discovery to be reopened.

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens