

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT SCHMIDT and SHEILA SCHMIDT,

Plaintiffs-Appellants,

v

CAROL LAVONNE MITCHELL and
SUBURBAN MOBILITY AUTHORITY
REGIONAL TRANSPORTATION AUTHOR-
ITY, d/b/a SMART TRANSPORTATION,

Defendants-Appellees.

UNPUBLISHED

August 23, 2002

No. 233290

Wayne Circuit Court

LC No. 99-939110-NO

Before: White, P.J., and Neff and Jansen, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from a circuit court order dismissing the action. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After the trial court ruled that defendant Mitchell's personnel file was not discoverable, plaintiffs requested the information from defendant SMART under the Freedom of Information Act, MCL 15.231 *et seq.*¹ The court granted defendants' motion to dismiss for violation of its order. MCR 2.504(B)(1). We review the trial court's decision to dismiss an action for an abuse of discretion. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995).

Although dismissal of the action was authorized, *Cummings v Wayne Co*, 210 Mich App 249, 252-253; 533 NW2d 13 (1995); MCR 2.504(B)(1), it "is a drastic step that should be taken cautiously." *Vicencio, supra*. "Before imposing such a sanction, the trial court is required to carefully evaluate all available options on the record and conclude that the sanction of dismissal is just and proper." *Brenner v Kolk*, 226 Mich App 149, 163-164; 573 NW2d 65 (1997). Factors to be considered in determining whether dismissal is an appropriate sanction include: (1) whether the violation was willful or accidental; (2) the degree of compliance with other parts of the order; (3) attempts to cure the defect; (4) whether the party has a history of refusing to comply with other court orders; (5) whether the party has a history of deliberately delaying the

¹ Defendant released a redacted copy of the file even though it was exempt from disclosure. MCL 15.243(1)(v).

proceedings; (6) whether the opposing party has been prejudiced; and (7) whether a lesser sanction would better serve the interests of justice. *Vicencio, supra* at 507.

Although the trial court found that counsel's violation of its order was willful, it did not address the other factors or consider lesser sanctions. Accordingly, we reverse the order of dismissal and remand for a determination regarding an appropriate sanction in light of the appropriate factors.

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

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen