

STATE OF MICHIGAN  
COURT OF APPEALS

---

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

L.E. DIEHL, D.A. DIEHL, M.E. DIEHL and C. L.  
LANHAM,

Defendants-Appellants.

---

UNPUBLISHED  
December 16, 2004

No. 249910  
Wayne Circuit Court  
LC No. 02-226517-CZ

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendants appeal as of right from a default judgment entered by the trial court. We affirm in part and reverse in part.

Plaintiff obtained a judgment against defendant L.E. Diehl compelling him to clean up property he owned in Huron Township. He failed to comply with the judgment, claiming a lack of funds. Plaintiff discovered that defendant had recently transferred his residential property in Westland to the other defendants and filed this action to have the transfer set aside under the Uniform Fraudulent Transfer Act, MCL 566.31 *et seq.* Plaintiff later sought a default judgment based in part on defendants' failure to provide discovery. The trial court granted the motion and entered a judgment setting aside the transfer. It also ordered L.E. Diehl to pay plaintiff \$65,200 for the estimated cost of the clean up ordered in the prior case plus costs awarded in that case and authorized other relief in the event he failed to pay.

The trial court's imposition of discovery sanctions is reviewed for an abuse of discretion. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). Statutory interpretation is a question of law which is reviewed de novo. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

The court was authorized to enter a default judgment without first issuing an order compelling discovery because defendants failed to answer interrogatories. MCR 2.313(B)(2)(c), (D)(1)(b). Such a harsh sanction is "generally appropriate only when a party flagrantly and wantonly refuses to facilitate discovery, not when the failure to comply with a discovery request is accidental or involuntary," *Bass, supra*, and should not be considered if other sanctions are more appropriate. *Thorne v Bell*, 206 Mich App 625, 632-633; 522 NW2d 711 (1994). However, defendants waived any claim of error regarding entry of a default judgment by

agreeing that the transfer of the Westland property could be set aside. *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994). Therefore, the trial court's entry of a default judgment is affirmed.

The court properly set aside the quitclaim deed so it could be reached to satisfy any debts L.E. Diehl owed to plaintiff. MCL 566.37(1)(a). However, because plaintiff never pleaded a claim to have the judgment for injunctive relief rendered in the prior case reduced to a money judgment, the court did not have authority to grant such relief. *Reid v Michigan*, 239 Mich App 621, 630; 609 NW2d 215 (2000). While the court was authorized to render such relief as it deemed just, MCL 566.37(1)(c)(iii), such relief was limited to that authorized by law to rectify the harm caused by the fraudulent transfer of property. That harm was alleviated in this case by setting aside the transfer and enjoining any further disposition of the Westland property so that it would be available to satisfy any costs incurred by plaintiff in the event it had to clean up the Huron Township property and obtained a judgment against L.E. Diehl for reimbursement. Plaintiff's entitlement to such costs was not the type of relief available for a fraudulent transfer of property. MCL 566.37; MCL 566.38. Therefore, to the extent the trial court's order awards plaintiff a money judgment and such other relief in the event the judgment is not paid, it is reversed.

Affirmed in part and reversed in part. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Kirsten Frank Kelly