

STATE OF MICHIGAN
COURT OF APPEALS

WALTER STACK and MICHELLE STACK,

Plaintiffs-Appellants,

v

GMAC MORTGAGE CORPORATION,

Defendant-Appellee.

UNPUBLISHED

December 27, 2007

No. 271186

Bay Circuit Court

LC No. 04-003814-CH

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals by right from the decision of the circuit court dismissing the cause of action pursuant to MCR 2.504(B)(1) due to plaintiffs' failure to carry out a court order. For the reasons set forth in this opinion, we affirm the trial court. This opinion is being decided without oral argument pursuant to MCR 7.214(E).

In 2002, plaintiffs obtained a \$72,000 mortgage on their home. The mortgage was immediately assigned by the original mortgage company (HomeAlliance Mortgage Co.) to a second mortgage company (EquiCredit Corp of America) and then a third (Fairbanks Capital Corp) before being assigned to defendant. In the fall of 2004, defendant initiated foreclosure on the mortgage by advertisement. Plaintiffs brought suit to halt the foreclosure, and to request a declaratory judgment regarding the correct amount due to defendant for the mortgage. The trial court granted plaintiffs a temporary restraining order, and then a preliminary injunction, preventing the foreclosure of the home.

Defendant moved for summary disposition on the grounds that (1) plaintiffs had defaulted under the mortgage and (2) plaintiffs' claims were barred by res judicata and release, because plaintiffs had failed to opt out of a class action lawsuit against Fairbanks Capital Corp. The trial court initially denied defendant's motion. However, on February 23, 2007, the trial court altered its initial order, stating that it was taking defendant's motion "under advisement." It further ordered plaintiffs to place the amount due to defendant (then \$10,905) in escrow in defendant's attorney's Interest on Lawyers Trust Account (IOLTA) within 21 days. Plaintiffs were also ordered to place subsequent monthly payments in the IOLTA account on the first of each month. When plaintiffs failed to timely comply with the trial court's order, defendant brought a motion for summary disposition pursuant to MCR 2.504(B)(1). Several weeks later, after the filing of the motion to dismiss, plaintiffs placed a check for \$6,000 in the IOLTA

account, but did not make any payments thereafter. After a hearing, the trial court granted defendant's motion to dismiss.

Plaintiff argues that the trial court abused its discretion when it dismissed this case with prejudice. A trial court's dismissal of a case for failure to comply with a court order is reviewed for an abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Id.*, quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Trial courts have the inherent authority to sanction parties to litigation, which includes the power to dismiss an action. *Id.* at 376. Further, Michigan has codified this authority in its statutory scheme and in its court rules. See MCL 600.611 and MCR 2.504(B)(1). MCL 600.611 states that "[c]ircuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit court's jurisdiction and judgments." MCR 2.504 (B)(1) states that "[i]f the plaintiff fails to comply with these rules or a court order, a defendant may move for dismissal of an action or a claim against that defendant."

In this case, the trial court ordered plaintiffs to place the amount owed to defendant since November 26, 2004 in escrow and also to place subsequent monthly payments in escrow on the first of the month. Plaintiffs wrote a check for \$6,000 to be placed in the IOLTA account approximately three weeks after the motion to dismiss was filed. At the time of plaintiff's actions, the total amount due was \$10,905. Accordingly, plaintiffs failed to escrow the full amount due within 21 days as ordered by the court. Additional monthly payments were also not made as required. Indeed, as of the hearing date, plaintiffs had only paid \$6,000 of the \$12,300 then owed. Because our Supreme Court's decision in *Maldonado, supra*, is controlling, we affirm the dismissal by the trial court.

In *Maldonado*, our Supreme Court concluded that no abuse of discretion occurred in dismissing the plaintiff's case "because the trial court possessed the inherent authority to dismiss the action, and because the trial court warned plaintiff and her counsel that dismissal would result if they continued to publicize evidence ruled inadmissible by court order." *Maldonado, supra* at 376. Similarly in this case, the trial court possessed the inherent authority to dismiss the action for a failure to comply with a court order, and the trial court warned plaintiffs that it would entertain another motion for summary disposition if the plaintiffs did not comply with the court's order. Our Supreme Court further stated in *Maldonado* that when a trial court selects among several possible "principled outcomes, the trial court has not abused its discretion." *Maldonado, supra* at 388, quoting *Babcock, supra* at 269. Accordingly, as long as dismissal is among the potential principled outcomes, no abuse of discretion has occurred. *Id.* at 395 n 24 (observing that "even if we were to assume that there were other sanctions available . . . [s] the sanction of dismissal was clearly within the range of reasonableness under the circumstances"). Here, the trial court based its decision to dismiss on the fact that plaintiffs were only ordered to escrow the outstanding balance, without any penalty fees or additional accrued interest, and yet failed to do so, even when they had an additional two months after the motion for dismissal had been filed. The trial court further noted that plaintiffs had been behind on their payments to defendant and its predecessors almost from the inception of the mortgage. Given the record

before us, the decision to dismiss, which is specifically authorized by MCR 2.504(B)(1), was within the range of principled outcomes. Accordingly, we affirm the trial court.

Affirmed.

/s/ Bill Schuette
/s/ Stephen L. Borrello