

STATE OF MICHIGAN
COURT OF APPEALS

HEATHER GERING,

Plaintiff-Appellant,

v

ANDERSON VILLAS, L.L.C.,

Defendant/Third-Party Plaintiff-
Appellee,

and

APRIL CURTIS,

Third-Party Defendant.

UNPUBLISHED

May 13, 2008

No. 275940

Washtenaw Circuit Court

LC No. 05-001091-NO

Before: Wilder, P.J. and O'Connell and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We reverse.

As plaintiff was walking to her car from her apartment in defendant Anderson Villas' building, she slipped and fell on ice, fracturing her ankle. She was unable to see the ice because it was still dark outside. Plaintiff filed a premises liability action against defendant, and defendant filed a motion for summary disposition. Plaintiff timely filed a response and brief to the motion, but the trial court struck both because the brief was twenty-four pages, exceeding the official page limit in MCR 2.119(A)(2) by four pages. The trial court then granted summary disposition for defendant because plaintiff had failed to properly oppose defendant's motion.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We review for abuse of discretion a trial court's rejection of a brief that does not conform to the court rules. See *Prussing v Gen Motors Corp*, 403 Mich 366, 370; 269 NW2d 181 (1978). Here, the trial court's order provided:

While Plaintiff filed her response timely . . . , Plaintiff's brief does not otherwise comply with the applicable Michigan Court Rules: it is 24 pages, exceeding the

page limit defined by MCR 2.119(A)(2). Plaintiff's response and attendant brief are therefore STRICKEN from the record as non-conforming pleadings. Plaintiff having failed to file a conforming response and brief, this Court finds that she has failed to provide any substantively admissible evidence or legal argument in opposition to Defendant's motion. Therefore, for the reasons stated in Defendant's motion, summary disposition of Plaintiff's claims against Defendant Anderson Villas LLC is appropriate and Defendant's motion is GRANTED.

According to MCR 2.119(A)(2), "the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits." The court rule does not indicate what sanctions a trial court should impose for violating its technical page and typeset requirements, but in *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 507; 536 NW2d 280 (1995), we stated:

This Court has summarized some of the factors that a court should consider before imposing the sanction of dismissal: (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice.

In the instant case, the trial court did not outright dismiss plaintiff's complaint as a sanction for her nonconforming brief, but plaintiff's filing of a responsive brief with supporting documentary evidence was crucial to the survival of her case. See *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Moreover, it is clear from the trial court's order that it understood that the ultimate sanction for plaintiff's four extra pages was dismissal, yet it did not discuss any of the factors from *Vincencio*. Moreover, the Court Rules themselves do not demand such zealous adherence to the guidance they provide. According to MCR 1.105, a trial court should construe the rules "to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." Our Supreme Court's oft-repeated paraphrase of the commentary to this rule as originally enacted, GCR 1963, 13, strikes us as especially applicable here.

Rules of practice and procedure are exactly that. They should create no rights and should be thought of as indicating the way in which justice should be administered. They should give direction to the process of administering justice but their application should not become a fetish to the extent that justice in an individual case is not done. There is a need for guides and standards. They must be followed but they must always be thought of as guides and standards to the means of achieving justice, not the end of justice itself. [*Higgins v Henry Ford Hosp*, 384 Mich 633, 637; 186 NW2d 337 (1971) (cited with approval in *People v Grove*, 455 Mich 439, 469-470, n 36; 566 NW2d 547 (1997))].

Here, the trial court's order did not determine whether striking plaintiff's brief promoted the ends of justice, it merely decided the case as though the four additional pages granted defendant the right to have the entire brief stricken from the record. In the absence of a rule directing such a dramatic sanction, this rigid and severe construction of the technical court rule

regarding page limits and font sizes, MCR 2.119(A)(2), contravened the general rule of construction reflected in MCR 1.105. Because the trial court misconstrued the mechanics of motion practice as a procedural tightrope upon which a litigant must balance carefully and perfectly to obtain a fair trial, it abused its discretion by striking plaintiff's reply brief and dismissing her case.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Peter D. O'Connell

/s/ William C. Whitbeck