

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT KEASEY and PHILLIP HENRY,

Plaintiffs/Counter-Defendants-  
Appellees/Cross-Appellants,

v

AARON LAWRENCE and KEVIN SCOTT,

Defendants/Counter-Plaintiffs-  
Appellants/Cross-Appellees.

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UNPUBLISHED

January 13, 2009

No. 280625

Wayne Circuit Court

LC No. 06-609629-CK

Before: Murphy, P.J., and K.F. Kelly and Donofrio, JJ.

PER CURIAM.

Defendants, Aaron Lawrence and Kevin Scott, appeal as of right from a judgment of no cause of action entered on their countercomplaint after their motion to adjourn trial was denied and they were unprepared to proceed with trial. Plaintiffs, Robert Keasey and Phillip Henry, cross appeal from a judgment of no cause of action on their principal complaint, which was entered as a sanction for their deliberate refusal to comply with an injunction. This case arises from defendants' purchase of a Muffler Man franchise. Because defendants have failed to show that the trial court abused its discretion in denying their motion for an adjournment, and because plaintiffs had unclean hands and were not entitled to the court's assistance, the trial court did not abuse its discretion in dismissing the complaint and entering a judgment of no cause of action against plaintiffs, we affirm.

Defendants argue that the trial court erred in denying their motion for an adjournment. A court's ruling on a motion for an adjournment is reviewed for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). An abuse of discretion occurs only when the trial court's decision is outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A motion for an adjournment must be based on good cause, and may be granted to promote the interests of justice. *Soumis, supra* at 32; see also MCR 2.503(B)(1) and (D)(1). The motion must be made as soon as possible after ascertaining the facts that support the need for an adjournment. *Soumis, supra* at 32.

In this case, defendants were aware of the trial date and appeared for trial. In the last ten days before trial, however, they failed to return defense counsel's telephone calls and did not assist him in preparing for trial. Defense counsel waited until the day of trial to move for an

adjournment. He did not raise the issue of his relationship with his clients until after the trial court indicated that failure to prepare was not good cause for an adjournment. Further, he had recently retracted a motion to withdraw and continued to represent defendants and has continued to do so on appeal.

Defendants' failure to communicate with and assist their attorney in preparing for trial shows a lack of diligence, and does not constitute good cause for an adjournment. See *Herrera v Levine*, 176 Mich App 350, 355-356; 439 NW2d 378 (1989) (trial court did not err in denying plaintiffs' request to substitute their expert witness just before trial, and dismissing the case after counsel conceded that he was not prepared to proceed); compare *Tisbury v Armstrong*, 194 Mich App 19, 20-21; 486 NW2d 51 (1991) (trial court erred in refusing to grant an adjournment where plaintiffs' expert witness withdrew just before trial). Thus, we conclude that the trial court properly found that a lack of diligence was shown by defendants' failure to communicate with and assist their attorney in preparing for trial, and that this circumstance did not constitute good cause for an adjournment. While there were no previous requests for an adjournment, a motion for an adjournment should have been made as soon as possible, not on the day of trial.

Concerning the interests of justice, there was no record evidence or proffer of evidence to support defendants' claim for damages. Further, as the trial court noted, defense counsel could have sought to enforce the injunction and thereby mitigated defendants' damages by moving to show cause regarding why plaintiffs should not be held in contempt for violating the injunction. The trial court's decision to deny an adjournment was a reasonable and principled one under the circumstances and, accordingly, was not an abuse of discretion.

On cross appeal, plaintiffs argue that the trial court erred in entering a judgment of no cause of action as a sanction for their failure to comply with the trial court's injunction. A trial court's exercise of the power to sanction litigants and their counsel, even by dismissal, "may be disturbed only upon a finding that there has been a clear abuse of discretion." *Maldonado, supra* at 388 (internal quotations and citation omitted).

"[T]rial courts possess the inherent authority to sanction litigants and their counsel, including the right to dismiss an action." *Maldonado, supra* at 389. "The authority to dismiss a lawsuit for litigant misconduct is a creature of the 'clean hands doctrine' and, despite its origins, is applicable to both equitable and legal damages claims." *Id.* at 389 (citations omitted). "The authority is rooted in a court's fundamental interest in protecting its own integrity and that of the judicial process." *Id.* (internal quotations and citation omitted). "The 'clean hands doctrine' applies not only for the protection of the parties but also for the protection of the court." *Id.* (citations omitted).

Regardless of whether plaintiffs believed that the injunction was improperly issued, a trial court's orders must be obeyed even if "clearly incorrect." *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998); see also *Schoensee v Bennett*, 228 Mich App 305, 317; 577 NW2d 915 (1998). Thus, plaintiffs' arguments that there were issues for trial, that the noncompetition agreement was moot, that the injunction was erroneously granted, and that the noncompetition agreement was unlawful, do not provide an excuse for their noncompliance with the injunction. Plaintiffs have proffered no legitimate reason for their deliberate refusal to obey the court's order, e.g., inability to comply. See *Detroit v Dep't of Social Services*, 197 Mich App 146, 159; 494 NW2d 805 (1992).

Plaintiffs admittedly disobeyed the trial court's injunction despite being warned at the hearing on their motion for reconsideration that their continued noncompliance would have serious consequences. Plaintiffs evidently believed that they had the right to disobey a court order that they disagreed with, while at the same time seeking court assistance in enforcing other aspects of their agreement with defendants. The trial court was justified in protecting its integrity and that of the judicial process by sanctioning plaintiffs. Under the circumstances, the trial court did not abuse its discretion by dismissing plaintiffs' complaint and entering a judgment of no cause of action against plaintiffs.

Plaintiffs raise additional arguments challenging the trial court's decision to issue the injunction in the first instance. Regardless of the merits of plaintiffs' arguments, however, they were still required to comply with the court's order, even if erroneous. Thus, even assuming, without deciding, that plaintiffs could establish that the injunction was improper, it would not change the outcome of this case. Therefore, these issues are moot and we decline to consider them. *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003).

Affirmed.

/s/ William B. Murphy  
/s/ Kirsten Frank Kelly  
/s/ Pat M. Donofrio