

STATE OF MICHIGAN
COURT OF APPEALS

JEWEL O’KOPSKI,

Plaintiff-Appellant,

V

MARK FANTUZZI, SHARON FANTUZZI, and
ANNA SALSBURY,

Defendants-Appellees.

UNPUBLISHED

October 26, 2010

No. 293708

Wayne County Circuit Court

LC No. 08-125667-CZ

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Plaintiff appeals the trial court’s order that dismissed this case as a sanction for her failure to comply with an order compelling discovery. For the reasons set forth below, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On October 7, 2008, plaintiff filed a complaint against defendants and asserted claims of assault, battery, intentional infliction of emotional distress, stalking, breach of contract, and promissory estoppel/unjust enrichment. According to plaintiff, defendant Mark Fantuzzi physically threatened her during an argument that took place at a house Mr. Fantuzzi rented to plaintiff. Plaintiff further asserted that defendants breached a contract in which they agreed to reimburse her for repairs she made to the rental house. Plaintiff also alleged that defendants verbally harassed her on certain, unspecified occasions.

On February 20, 2009, defendants served on plaintiff interrogatories and requests for production of documents. Plaintiff failed to respond, and defendants filed a motion to compel discovery on May 8, 2009. The trial court granted defendants’ motion on May 22, 2009, and ordered plaintiff to answer defendants’ interrogatories and produce the requested documents within 14 days. Plaintiff served a copy of her answers to interrogatories on defendants on June 5, 2009. On June 26, 2009, defendants filed a motion for sanctions for plaintiff’s failure to comply with the trial court’s discovery order. Specifically, defendants asserted that plaintiff’s answers to interrogatories were unresponsive, incomplete, and they were not “answered separately and fully in writing under oath” as required by MCR 2.309(B)(1), or signed by plaintiff as required by MCL 2.309(B)(3).

The trial court heard oral argument on defendants’ motion for sanctions on July 10, 2009. The court opined that, notwithstanding its prior order to compel, plaintiff failed to give adequate

or informative responses to defendants' interrogatories and, therefore, failed to comply with its order. Accordingly, the trial court granted defendants' motion for sanctions and dismissed the case.

"This Court reviews for an abuse of discretion a trial court's decision with regard to whether to impose discovery sanctions." *Linsell v Applied Handling, Inc*, 266 Mich App 1, 21; 697 NW2d 913 (2005). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007). MCR 2.313(B)(2) provides, in relevant part:

If a party . . . fails to obey an order to provide or permit discovery, including an order entered under subrule (A) of this rule or under MCR 2.311, the court in which the action is pending may order such sanctions as are just, including, but not limited to the following:

(c) an order striking pleadings or parts of pleadings, staying further proceedings until the order is obeyed, dismissing the action or proceeding or a part of it, or rendering a judgment by default against the disobedient party

We hold that the trial court did not abuse its discretion when it dismissed plaintiff's case for failing to comply with its discovery order. The record reflects that plaintiff made no attempt to timely answer defendants' interrogatories when they were served in February 2009. Months later, following the order to compel on May 22, 2009 and one day before the court's deadline to serve the answers on defendants, plaintiff's counsel sought copies of the interrogatories from defense counsel in order to email them to his client. Though plaintiff sent answers to defendants by the June 5, 2009 deadline, they clearly failed to comply with the court rules. Not only were they not made under oath or signed by plaintiff, in direct violation of MCR 2.309(B)(1) and MCL 2.309(B)(3), the answers to the interrogatories sent by Sharon Fantuzzi and Anna Salsbury were wholly unresponsive. Indeed, the answers merely referenced responses set forth in the answers given for Mr. Fantuzzi, without any information specifically related to allegations against Ms. Fantuzzi or Ms. Salsbury. With regard to the allegations against Mr. Fantuzzi, the answers were incomplete with regard to the majority of plaintiff's claims. Thus, after ignoring defendants' request for discovery for months, and in response to a direct order to provide answers to defendants, plaintiff saw fit to merely provide a rough, unsigned draft of answers without sufficient detail for the three defendants to use in preparing their case. Though plaintiff claimed in the interrogatories that defendants could obtain further information from other sources, there is no legal authority to support the notion that this may justify her failure to properly respond.

Though we recognize that dismissal as a sanction for violation of a discovery order is appropriate only in egregious cases, we conclude that the result here is within the range of principled outcomes where plaintiff wilfully failed to comply with the trial court's order and our court rules, *Barnett*, 478 Mich at 158, and, therefore, we hold that the trial court's sanction did not constitute an abuse of discretion.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad