

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN T. DEWAN and CATHERINE A.
DEWAN,

UNPUBLISHED
May 10, 2012

Plaintiffs-Appellants,

V

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., and GMAC MORTGAGE,
L.L.C.,

No. 302498
Wayne Circuit Court
LC No. 10-007417-CZ

Defendants-Appellees.

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order dismissing their action to quiet title. Because the trial court did not abuse its discretion by dismissing plaintiffs' complaint, and plaintiffs were not denied their rights to equal protection and due process, we affirm.

Plaintiffs first argue that the trial court abused its discretion when it dismissed their action for failure to comply with a court order¹. We review for an abuse of discretion a trial court's order of dismissal for failure to comply with a court order. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 630; 750 NW2d 228 (2008). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Pursuant to MCR 2.504(B)(1), a trial court may dismiss a party's action for failure to comply with the court rules or a court order. Dismissal is a severe sanction, however, and the court should consider several factors before entering an order of dismissal. Such factors include:

¹ Plaintiffs also argue that the trial court abused its discretion by granting defendants' motion for a protective order and preventing plaintiffs from conducting discovery. The trial court, however, did not enter a protective order, but rather, dismissed plaintiffs' claims. Because plaintiffs' arguments pertain to a protective order and discovery are misplaced, we do not address them further.

(1) whether the violation was willful 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. [*Woods*, 277 Mich App at 631, quoting *Vincencio v Ramirez, MD, PC*, 211 Mich App 501, 507; 536 NW2d 280 (1995).]

Here, the trial court dismissed plaintiffs' action after concluding that plaintiffs failed to comply with the appropriate pleading requirements and the court's order for a more definite statement. Under MCR 2.111(A)(1), "[e]ach allegation of a pleading must be clear, concise, and direct." In addition, pursuant to MCR 2.111(B)(1), a complaint must contain a demand for relief and

[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]

The basic purpose of a pleading is to put the opposing party on notice of the nature of a claim so that the party may "take a responsive position." *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 305; 788 NW2d 679 (2010) (quotation marks and citations omitted).

Over the course of seven months, plaintiffs filed a complaint and a document titled "More Definite Statement." Although they filed two motions to file amended complaints, and attached drafts of their amended complaints as exhibits, they never filed the amended complaints with the trial court clerk. In any event, none of the pleadings complied with the court rules. Plaintiffs' second amended complaint and more definite statement are not clear, concise, or direct, and they do not contain specific allegations, as required by MCR 2.111(A)(1) and MCR 2.111(B)(1). Rather, they include long legal arguments that cite foreign case law.

Plaintiffs' more definite statement in large part appears to argue that their complaint was not deficient. They also discussed pleading requirements, standards for dismissal for failure to state a claim, and how to correctly plead defenses. In addition, plaintiffs claimed that as litigants proceeding in propria persona, they were "entitled to present evidence in support of their claims," despite any insufficiencies in their pleadings. Their relief requested was that the court order defendants to file an answer. Plaintiffs' purported second amended complaint contained a lengthy section entitled "Discussion of Recent Legal History of Missing Mortgage Notes and its Application to the Instant Case," but that section does not appear to apply in the instant case. It references other cases and includes arguments related to missing mortgage notes, but plaintiffs merely assumed, rather than affirmatively alleged, that their mortgage note was missing. Even viewing plaintiffs' pleadings with some leniency, their allegations are unclear, confusing, and often reference unrelated facts and law.

Considering the circumstances of this case, the trial court's decision to dismiss plaintiffs' action was within the range of reasonable and principled outcomes. See *Maldonado*, 476 Mich at 388. Although it does not appear that plaintiffs willfully violated the court's order for a more

definite statement, they completely misunderstood the purpose and requirements of a complaint. Plaintiffs repeatedly filed or presented defective pleadings, even after the trial court instructed them that they should not cite case law, they should delete certain paragraphs, and that their pleadings were too “brief-like” and should be narrowed down and made more concise. Plaintiffs made several attempts to cure the defects, but all were unsuccessful. They continued to make the same mistakes and, in fact, retained large portions of the previous, noncomplying pleadings in their proposed amended complaints.

The interests of justice and the prejudice to defendants also supported dismissing plaintiffs’ claims. This action spanned approximately seven months in the lower court and did not proceed beyond the initial pleading. Plaintiffs were provided several opportunities to amend their complaint and continued to assert confusing, verbose, and unspecific claims. The interests of judicial economy and administrative convenience supported dismissal. Further, defendants were compelled to respond to numerous motions and appear for at least three motion hearings, and plaintiffs served them with lengthy discovery requests that asked questions and requested documents unrelated and irrelevant to this case. Those requests, like plaintiffs’ pleadings, appear to have been taken in part from other cases that are unrelated to the subject matter of this case. For example, the discovery requests include references to balance sheets, general ledgers, and other matters not applicable here. Thus, considering these factors, we conclude that the trial court did not abuse its discretion by dismissing plaintiffs’ action for failure to comply with its order for a more definite statement.

Plaintiffs also argue that the trial court denied them their rights to equal protection and due process. We review unpreserved claims of constitutional error for plain error that was outcome determinative. *In re Consumers Energy Co*, 278 Mich App 547, 568; 753 NW2d 287 (2008). Plain error occurs “if (1) an error occurred (2) that was clear or obvious and (3) [the error] prejudiced the party, meaning it affected the outcome of the lower court proceedings.” *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010).

Every person is guaranteed equal protection of the law. See US Const, Am XIV; Const 1963, art 1, § 2. The purpose of the equal protection clause is to protect against intentional and arbitrary discrimination. See *Village of Willowbrook v Olech*, 528 US 562, 564; 120 S Ct 1073; 145 L Ed 2d 1060 (2000). Procedural due process generally requires notice and an opportunity to be heard before an impartial decision-maker within a meaningful time and in a meaningful manner. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 213-214; 761 NW2d 293 (2008). Moreover, “the essence of a substantive due process claim is the *arbitrary* deprivation of liberty or property interests.” *Id.* at 201 (emphasis in original).

Here, plaintiffs fail to establish plain error. The lower court record demonstrates that plaintiffs were given notice of all hearings and the opportunity to be heard at those hearings. They also had the opportunity to be heard through written pleadings, motions, and supporting briefs, and they took advantage of that opportunity. Although they claim that the trial court judge conspired through arbitrary and capricious proceedings to prevent them from obtaining discovery and demonstrated partiality, nothing in the record supports this claim. Further, although plaintiffs argue that they were denied their right to confront and cross-examine witnesses, the case did not proceed to the point at which testimony was taken and defendants

were likewise not afforded an opportunity to cross-examine witnesses. Accordingly, plaintiffs have failed to demonstrate plain error.

Affirmed. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio

/s/ Kathleen Jansen

/s/ Douglas B. Shapiro