

STATE OF MICHIGAN
COURT OF APPEALS

DAVID L. HUNTER,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 190760

Washtenaw Circuit Court

LC No. 95-004274-CZ

MICHAEL P. WATCHOWSKI, RICK P.
CORNELL, THOMAS P. PRESSLEY,
LIEUTENANT ATKINSON and
CITY OF ANN ARBOR,

Defendant-Appellees.

Before: Saad, P.J., and Neff and Reilly, JJ.

SAAD, J. (dissenting).

I respectfully dissent and would affirm.

Plaintiff, who is proceeding in pro per, alleges that the named Ann Arbor police officers falsely arrested him and conspired with the City of Ann Arbor to violate his civil rights. He now appeals the circuit court's dismissal of this action for failure to pay a \$5,000 court-imposed sanction and failure to appear at a scheduling conference.

After reviewing the record, I agree with the trial court's determination that plaintiff improperly terminated the deposition at issue. See MCR 2.306(E). Plaintiff argues that, pursuant to MCR 2.313(A)(5)(a), the trial court could only order him to pay defendants' reasonable expenses, including attorneys' fees, incurred in obtaining the order compelling discovery. However, plaintiff fails to recognize that the trial court sanctioned him for misrepresenting to the court the events surrounding the termination of the deposition. See *Cummins v Wayne County*, 210 Mich App 249; 533 NW2d 13 (1995) (affirming trial court's inherent power to dismiss plaintiff's case because of plaintiff's misconduct). Had I sat in the trial judge's position, I might have chosen another form of sanction. However, I do not believe that either the trial court's imposition of a \$5,000 sanction (after clear warning to the plaintiff) or the resulting dismissal was an abuse of discretion.

I would affirm.

/s/ Henry William Saad