

STATE OF MICHIGAN
COURT OF APPEALS

NICHOLAS LEWIS and VALERIE LEWIS,

Plaintiffs-Appellants,

v

CASTLE FARMS FOUNDATION, d/b/a
THE CASTLE, d/b/a CASTLE FARMS, d/b/a
CASTLE FARMS PRODUCTIONS, d/b/a
CASTLE TICKET OFFICE, d/b/a
TIMOTHY LaCASSE,

Defendant-Appellee.

UNPUBLISHED
December 16, 1997

No. 197332
Charlevoix Circuit Court
LC No. 91-004115 NO

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Plaintiffs appeal by right dismissal of their premises liability negligence action, pursuant to the trial court's written opinion noting, as grounds for dismissal, plaintiffs' failure to attend the pretrial conference as ordered pursuant to MCR 2.401(F), and forfeiture of defendant's corporate charter for failure to file annual reports pursuant to §922 of the Business Corporations Act and concomitant lack of collectability of any judgment against defendant. This case is being decided without oral argument pursuant to MCR 7.214(E).

On October 3, 1995, the trial court entered a scheduling order, providing that a pretrial/settlement conference would be held June 10, 1996, and that the parties and their attorneys were required to be in attendance. On June 10, 1996, the trial court rescheduled the conference to July 8, 1996; that order did not relieve the parties of their obligation to attend or in any other way affect the original order. The neglect of plaintiffs' counsel to inform them of their obligation to attend is culpable negligence properly attributed to plaintiffs. *White v Sadler*, 350 Mich 511, 522; 87 NW2d 192 (1957).

* Circuit judge, sitting on the Court of Appeals by assignment.

Nonetheless, the record contains no suggestion that plaintiffs' failure to attend was wilful or that counsel was not possessed of full authority to settle the case without their presence. Where a party has a representative with full settlement authority present for the pretrial or settlement conference, the purposes of MCR 2.401(F) are fulfilled and dismissal for failure to attend is an abuse of discretion. *Kornak v Auto Club Ins Ass'n*, 211 Mich App 416, 422; 536 NW2d 553 (1995).

Defendant's forfeiture of its corporate charter for failure to file annual reports would prevent defendant from prosecuting a suit, but does not absolve defendant of liability otherwise incurred or of the responsibility of defending an action. *Great Lakes Restaurants, Inc v Rumery Construction Co, Inc*, 23 Mich App 501, 504-505; 179 NW2d 36 (1970). Even though defendant has been dissolved in contemplation of the law, it continues in existence for the purpose, inter alia, of paying its debts and other liabilities pursuant to §833(c) of the Business Corporations Act. Whether any judgment against defendant is collectable is an issue to be resolved after a judgment obligation is first established, not before. MCR 2.621(A); see also MCR 3.102.

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

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood