STATE OF MICHIGAN

COURT OF APPEALS

THERMON MOORE,

Plaintiff-Appellant,

v

AL BELANGER, HAROLD JACKS, MERCY HOSPITAL, WEST MICHIGAN KIDNEY CENTER, COBE DIALYSIS CORPORATION, DR. BARRY KRAM, DR. TWU, and SHIRLEY HUGENOT,

Defendants-Appellees.

UNPUBLISHED
March 3, 1998

No. 187207
Muskegon Circuit Court
LC No. 94-031184 NH

Before: Griffin, P.J., and Holbrook and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right following the dismissal of his case against defendants. We affirm.

Plaintiff first argues that the circuit court erred in dismissing the case because it lost jurisdiction when a mediation panel recommended a $5000 award to plaintiff. Subject-matter jurisdiction is a question of law that we review de novo. *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995).

Although plaintiff cites no authority to support his argument, we presume that plaintiff relies upon MCL 600.605; MSA 27A.605, which grants the circuit court original jurisdiction in all civil claims and remedies except where exclusive jurisdiction is given by statute to some other court, and MCL 600.8301; MSA 27A.8301, which grants exclusive jurisdiction to the district court when the amount in controversy in a civil action does not exceed $10,000. In this case, plaintiff filed a multiple-count complaint in the circuit court seeking money damages in excess of $1 billion dollars. Inasmuch as neither plaintiff nor defendants moved the circuit court to remove the action to the district court, plaintiff's demand for relief was sufficient to give the circuit court subject-matter jurisdiction over the case, and therefore the court had jurisdiction to dismiss the case. While MCR 4.003(A)(1) allows a

circuit court to remove an action to district court on its own initiative, the court rule does not require removal when a case has been evaluated by a mediation panel at $10,000 or less.

Plaintiff next argues that the trial court erred in dismissing plaintiff's claims, in part, because plaintiff failed to answer defendants' interrogatories. Specifically, plaintiff contends that a review of the record reveals that plaintiff did answer the interrogatories. We review for an abuse of discretion a lower court's order of dismissal based on a party's failure to comply with a discovery order. *Eyde v Eyde*, 172 Mich App 49, 54; 431 NW2d 459 (1988).

During the course of this case, the circuit court ordered plaintiff to provide full and complete answers to interrogatories by October 31, 1995. Our review of the record reveals that plaintiff did not comply with the discovery order. Accordingly, the circuit court did not abuse its discretion in basing its dismissal of plaintiff's case, in part, on plaintiff's failure to comply with its discovery order.

Plaintiff next argues that the circuit court erred in finding that he had pleaded that defendant Cobe Dialysis Corporation's dialysis machine had assaulted him and, then, granting a motion for summary disposition based on its legal conclusion that a machine cannot assault a person. We review de novo a grant of summary disposition based on a failure to state a claim. *Smith v Kowalski*, 223 Mich App 610, 612; 567 NW2d 463 (1997).

Our review of the record reveals that plaintiff, on September 27, 1994, stipulated to narrowing the scope of his litigation to claims of racial discrimination, assault and battery, and intentional infliction of emotional distress, after which the circuit court issued an order recognizing the same. On March 1, 1995, defendant Cobe Dialysis Corporation moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that plaintiff's claim against it, which sounded in products liability, was barred by the circuit court's order recognizing plaintiff's stipulation and that no set of facts existed which could support a claim against it based on the remaining theories. On April 31, 1995, the circuit court granted the motion.

Summary disposition against a claim may be granted on the ground that the opposing party "has failed to state a claim on which relief can be granted." MCR 2.116(C)(8), *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Smith, supra* at 612-613. Because plaintiff stipulated that he would pursue only claims of racial discrimination, assault and battery, and intentional infliction of emotional distress, plaintiff's products liability claim against defendant Cobe Dialysis Corporation was properly dismissed from the action because no factual development could possibly justify a right of recovery against it on the remaining causes of action.

Plaintiff next challenges the circuit court's decision to order plaintiff to pay defendants $14,817.21 in attorney fees and litigation expenses as sanctions. We review a circuit court's imposition of sanctions for abuse of discretion. *Barlow v John Crane-Houdaille, Inc*, 191 Mich App 244, 251; 477 NW2d 133 (1991).

A circuit court may impose sanctions pursuant to MCR 2.313 where a party fails to comply with a discovery order. Because plaintiff does not contest the amount of the sanctions imposed, we must only decide whether the circuit court abused its discretion in deciding to impose any sanctions upon plaintiff. The basis for defendants' motion for sanctions was that plaintiff had failed to comply with the circuit court's discovery order. Because we find that plaintiff did not comply with the discovery order, the circuit court did not abuse its discretion in imposing the challenged sanctions upon plaintiff.

Plaintiff finally argues that the circuit court erred in denying his request to excuse him from personally attending a telephonic conference in the circuit judge's chambers because he feared that such a meeting might result in his being physically harmed or falsely accused of misconduct. However, in order to preserve this issue for appellate review, the issue must have been raised and decided in the court below. *People v Grant*, 445 Mich 535, 546-547; 520 NW2d 123 (1994). In the instant case, plaintiff made no formal motion or objection to adjourn the hearing or to conduct the hearing in some other manner. Thus, because this issue is not preserved for appellate review, we need not review it unless failure to do so would result in manifest injustice. *Id*. We find no manifest injustice in not reviewing this issue.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff