

STATE OF MICHIGAN
COURT OF APPEALS

ALICIA JACKSON,

Plaintiff-Appellee,

v

MAZEN FOODS, an assumed name of BASHER
& MARK BROTHERS MARKET, INC., and
FRANK DOE,

Defendants-Appellants.

UNPUBLISHED

April 10, 2001

No. 220615

Wayne Circuit Court

LC No. 96-610244-NO

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Defendants appeal by leave granted from the order of the circuit court that reinstated plaintiff's complaint two years after it was dismissed as a result of plaintiff's failure to pay the statutory filing fees mandated by a 1997 circuit court order transferring the case to district court. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants argue on appeal that the trial court abused its discretion in granting reinstatement of the complaint on the basis that the 1997 transfer order was improper and that the court clerk had failed to send notice of the dismissal to plaintiff or plaintiff's counsel. Although the trial court did not cite MCR 2.612 in its ruling, we review it in that context because plaintiff relied upon that rule in moving for reinstatement. We review a trial court's decision on a motion brought under MCR 2.612 for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

Relief under MCR 2.612(C)(1)(a) for mistake or excusable neglect constituted an abuse of discretion because plaintiff's motion was not brought within one year of the order of dismissal, as required under MCR 2.612(C)(2). *Altman v Nelson*, 197 Mich App 467, 477-478; 495 NW2d 826 (1992).

Relief under MCR 2.612(C)(1)(f) for "any other reason justifying relief" also constituted an abuse of discretion given that these facts do not reflect the type of extraordinary circumstances that would justify relief under the subrule. Plaintiff's counsel concedes that he received a copy of

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

the 1997 transfer order, which clearly mandated the payment of a filing fee or else the action would be dismissed. Plaintiff's counsel's failure to comply with the transfer order followed by a lack of diligence in maintaining the action is not excusable under subrule (f). Relief under this subrule was not designed "to correct a failure to act or an ill-advised or careless decision by counsel." *Mikedis v Perfection Heat Treating Co*, 180 Mich App 189, 200; 446 NW2d 648 (1989); *Lark v Detroit Edison Co*, 99 Mich App 280, 283; 297 NW2d 653 (1980). See also *Altman*, *supra* at 478. Similarly, the failure of the clerk to send plaintiff's counsel notice of the dismissal does not operate to excuse the reason for the dismissal in the first place—plaintiff's counsel's conscious failure to comply with the order requiring payment of the filing fee.

Moreover, we would conclude that plaintiff's motion under subrule (f) was not brought within a reasonable time as required under MCR 2.612(C)(2). See *Altman*, *supra* at 479; *Tomblinson v Tomblinson*, 183 Mich App 589, 595-596; 455 NW2d 346 (1990).

Reversed. We lift the stay of proceedings previously granted by this Court.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard