

STATE OF MICHIGAN
COURT OF APPEALS

AMERACALL, INC.,

Plaintiff/Counter Defendant-
Appellant,

V

NATIONWIDE COMMUNICATIONS, INC., and
RICHARD MAKENS,

Defendants/Counter Plaintiffs/Third
Party Plaintiffs-Appellees,

and

E.J. PURDY, JOHN DOE, JANE DOE and ABC
COMPANY,

Third Party Defendants.

UNPUBLISHED
November 30, 2001

No. 226518
Oakland Circuit Court
LC No. 98-004499-CK

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of dismissal entered pursuant to MCR 2.402(G). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court allowed plaintiff's counsel to withdraw. The order required plaintiff to retain new counsel within thirty days and provided that the failure to do so "will result in dismissal of this case or appearance by [plaintiff's] representative before the court." The court also scheduled a pretrial conference to be held before the thirty-day period expired. When plaintiff's new attorney appeared for the hearing, the court apparently granted defendants' motion to disqualify him and then dismissed the case for plaintiff's failure to appear at the pretrial conference through proper counsel. We review the trial court's ruling for an abuse of discretion. *Ministrelli Constr Co v Monroe Co Rd Comm*, 153 Mich App 144, 149; 395 NW2d 38 (1986).

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

MRPC 3.7(a) precludes a lawyer from acting “as advocate at a trial in which the lawyer is likely to be a necessary witness except” in certain circumstances not applicable here. The purpose of the rule is to prevent any problems that would arise from a lawyer having to argue the credibility and effect of his own testimony, to prevent prejudice to the opposing party that might arise therefrom, and to prevent prejudice to the client if the lawyer is called as an adverse witness, not to permit the opposing party to seek disqualification as a tactical device to gain an advantage. *Smith v Arc-Mation, Inc*, 402 Mich 115, 119; 261 NW2d 713 (1978); *Kubiak v Hurr*, 143 Mich App 465, 471, 475; 372 NW2d 341 (1985); Comment to MRPC 3.7.

Plaintiff’s attorney had been deposed as a witness in this case. However, the substance of his testimony and its relevance to the facts at issue in this case have not been disclosed, so it is not clear from the record that he “is likely to be a necessary witness” at trial. Even assuming that he is in fact likely to be a necessary witness at trial, that fact only disqualified him from acting as a trial advocate; it did not preclude him from preparing the case for trial, participating in settlement negotiations and handling other pretrial matters. State Bar of Michigan Ethics Opinion RI-299 (December 18, 1997); State Bar of Michigan Ethics Opinion RI-281 (September 11, 1996); State Bar of Michigan Ethics Opinion RI-226 (February 7, 1995).

Given that plaintiff appeared through counsel at the pretrial scheduling conference, that the lawyer was not appearing as an advocate at trial, that plaintiff was unable to appear in propria persona at the hearing, *Peters Production, Inc v Desnick Broadcasting Co*, 171 Mich App 283, 287; 429 NW2d 654 (1988), that plaintiff did not have notice that defendants would seek to disqualify its new attorney at the pretrial conference, and that plaintiff still had time in which to retain another attorney pursuant to the order of withdrawal, the trial court abused its discretion in dismissing plaintiff’s case for violation of that order.

Reversed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post