

STATE OF MICHIGAN
COURT OF APPEALS

LASHON SCOTT,

Plaintiff-Appellant,

v

WAYNE ANGELO LAND and SOUTHERN
PARK LIMOUSINE, INC.,

Defendants-Appellees.

UNPUBLISHED

March 5, 2002

No. 228945

Wayne Circuit Court

LC No. 99-922002-NI

Before: Bandstra, P.J., and Murphy and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order dismissing this action for failure to comply with discovery orders. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants filed several motions for sanctions and dismissal after plaintiff provided untimely and incomplete answers to interrogatories. The trial court found that based on the number of discovery hearings, the court's orders, and the representations made, there was a willful, deliberate violation of the court's orders. The court dismissed the matter with prejudice. Plaintiff subsequently moved to disqualify the trial judge. The motion was denied by the trial judge and the chief judge of the circuit.

MCR 2.313(B)(2)(c) authorizes a trial court to dismiss a proceeding when a party fails to obey an order to provide discovery. *Thorne v Bell*, 206 Mich App 625, 632; 522 NW2d 711 (1994). This Court will review the imposition of sanctions for abuse of discretion. *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990).

The trial court should carefully consider the circumstances of the case to determine if a drastic sanction such as dismissal is appropriate. *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 451; 540 NW2d 696 (1995). Severe sanctions are appropriate only when a party flagrantly and wantonly refuses to facilitate discovery. *Traxler v Ford Motor Co*, 227 Mich App 276, 286; 576 NW2d 398 (1998). Before imposing the sanction of dismissal, the court should consider whether the failure to respond extends over a substantial period of time, whether an order was violated, the amount of time elapsed between the violation and the motion for dismissal, the prejudice to defendant, and whether willfulness has been shown. *Thorne, supra* at 632-633. The record should reflect that the trial court gave careful consideration to the factors

involved and considered all its options in determining what sanction was just and proper in the context of the case. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 86; 618 NW2d 66 (2000).

The record in this case does not show that the trial court gave full consideration to all of the factors involved. The court failed to consider whether a lesser sanction would better serve the interests of justice. *Dean, supra*. On remand, the court should consider all factors in determining the appropriate sanction.

There is no showing that the lower courts abused their discretion in denying the motion to disqualify. There is no evidence of actual bias, and the motion was untimely. MCR 2.003(C)(1).

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

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray