

STATE OF MICHIGAN  
COURT OF APPEALS

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LORI WARREN,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

November 25, 2003

No. 241796

Kent Circuit Court

LC No. 01-004934-NF

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order dismissing this action as a sanction for a discovery violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court will review a trial court's imposition of discovery sanctions for an abuse of discretion. *Traxler v Ford Motor Co*, 227 Mich App 276, 286; 576 NW2d 398 (1998). MCR 2.313(B)(2)(c) explicitly authorizes a trial court to dismiss a proceeding when a party fails to obey an order to provide discovery. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). The trial court should carefully consider the circumstances of the case to determine whether a drastic sanction such as dismissal is warranted. *Id.* "Severe sanctions are generally appropriate only when a party flagrantly and wantonly refuses to facilitate discovery, not when the failure to comply with a discovery request is accidental or involuntary." *Id.* The record should reflect that the trial court carefully considered the factors involved and all its options in determining a just and appropriate sanction in the context of the case. *Id.*

The trial court reviewed plaintiff's conduct, and concluded that her refusal to participate in the court-ordered independent medical examination was willful where the refusal was made on the advice of counsel, plaintiff failed to cooperate with two prior attempts to obtain an examination, and plaintiff had failed to comply with other discovery orders. The court found that the only proper response to plaintiff's disregard of the court's orders was dismissal. Plaintiff has failed to show that the trial court abused its discretion in dismissing the case. The court did

not err in vacating the arbitration order for plaintiff's uninsured motorist coverage claim where the insurance contract also provided for a medical examination.

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter