

STATE OF MICHIGAN
COURT OF APPEALS

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

JEFFREY WILSON,

Defendant,

and

MARY A. WILSON,

Defendant-Appellant.

UNPUBLISHED
December 11, 2003

No. 242220
Wayne Circuit Court
LC No. 01-113585-CC

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

PER CURIAM.

Defendant appeals by right a judgment entered in favor of plaintiff, the dismissal of her claim for just compensation asserted by plaintiff, and an order denying her motion for reconsideration, pursuant to MCR 2.119(F). We affirm.

Defendant's first issue on appeal is that the trial court abused its discretion in dismissing the case with prejudice for her failure to file a witness list. We disagree.

To preserve an issue for appellate review, it must be properly raised, addressed, and decided at trial. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Plaintiff has not properly preserved this issue for appeal, as it was not raised below. Generally, we review a trial court's imposition of discovery sanctions for an abuse of discretion. *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612, 618; 550 NW2d 580 (1996). But because defendant failed to preserve this issue below, we will review this issue for a plain error affecting defendant's substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

"While it is within the trial court's authority to bar an expert witness or dismiss an action as a sanction for the failure to timely file a witness list, the fact that such action is discretionary rather than mandatory necessitates a consideration of the circumstances of each case to determine if such a drastic sanction is appropriate." *Dean v Tucker*, 182 Mich App 27, 32; 451

NW2d 571 (1990). “The corollary to this is that the mere fact that a witness list was not timely filed does not, in and of itself, justify the imposition of such a sanction. Rather, the record should reflect that the trial court gave careful consideration to the factors involved and considered all of its options in determining what sanction was just and proper in the context of the case before it.” *Id.* at 32. In determining an appropriate sanction, the following factors should be considered:

(1) whether the violation was wilful [sic] or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, (4) actual notice to the defendant of the witness and the length of time prior to trial that the defendant received such actual notice, (5) whether there exists a history of plaintiff engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. [*Tucker, supra*, 182 Mich App at 32-33 (footnotes omitted).]

In applying these eight factors to this case, we conclude that the trial court did not commit plain error affecting defendant's rights in dismissing her case. Defendant knew both the dates for exchanging witness lists and the end of discovery, yet she failed to provide a witness list and to timely respond to plaintiff's interrogatories. The only attempt defendant made to provide plaintiff with the name of a witness was on the night before the hearing of plaintiff's motion to compel discovery. But, by that time, the witness list was already three months overdue, discovery had been closed for almost two months, and mediation had already taken place. Plaintiff then moved for entry of judgment. Although defendant had an opportunity to respond, she did not. Because defendant completely disregarded all discovery deadlines in the lower court and failed to respond to plaintiff's motion for entry of judgment, justice would not be better served by now allowing defendant to dispute the trial court's ruling.

Defendant's second issue on appeal is that plaintiff's motion for entry of judgment was brought under the wrong court rule, and therefore, the trial court erred in granting plaintiff's motion. We disagree.

Defendant preserved this issue by moving for reconsideration in the lower court on the basis that plaintiff's motion for entry of judgment was brought under the wrong court rule. The interpretation and application of court rules presents a question of law that this Court reviews de novo. *Reitmeyer v Schultz Equipment & Parts Co, Inc*, 237 Mich App 332, 336; 602 NW2d 596 (1999).

It is unclear from the record under which court rule the trial court granted plaintiff's motion for entry of judgment. Plaintiff, however, brought its motion for entry of judgment pursuant to MCR 2.602. In any event, we need not decide whether the motion was brought under the proper court rule, as we will not reverse a trial court's order if it reached the right result, albeit for the wrong reason. *Etefia v Credit Technologies Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001); *Welch v District Court*, 215 Mich App 253, 256; 545 NW2d 15 (1996).

For the reasons discussed in the first issue's analysis, we conclude that the trial court correctly granted plaintiff's motion for entry of judgment and correctly dismissed the case. We

find no prejudice or surprise to defendant, which would constrain us to reverse the trial court's ruling solely because the motion was mislabeled, and the court's ruling was predicated on the wrong rule. Defendant clearly had notice of the basis for plaintiff's motion, and that the relief sought was dismissal. Nonetheless, defendant did not even respond to the motion. Therefore, even though the motion was brought under the wrong court rule and the trial court's order may have been predicated on the wrong court rule, we affirm the trial court's order because the result was correct.

Defendant's third issue on appeal is that the trial court's failure to consider the factors set forth under MCR 2.313 regarding dismissal requires reversal. However, defendant has not properly preserved this issue for appeal, as it was not raised below. *Inglis, supra*, 223 Mich App at 168.

Indeed, in defendant's motion for reconsideration, she argues that MCR 2.313 does not apply to this case because the trial court never issued an order compelling discovery. It makes no sense for defendant to now claim on appeal that the court erred in failing to consider the factors set forth under MCR 2.313.

In any event, we have already analyzed these factors above, and have concluded that dismissal was proper. Because defendant argued in the lower court that MCR 2.313 was not applicable to this case, and because we applied the factors for dismissal above, we find that defendant has failed to show a plain error affecting her substantial rights.

Defendant's fourth issue on appeal is that this Court should remand the case for a determination on the merits because defendant has enough admissible evidence to show that the compensation awarded for her property was inadequate. As a general rule, an appellate court will not decide moot issues. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights. *B P 7, supra*, 231 Mich App at 359. An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief. *B P 7, supra*, 231 Mich App at 359. Because we have already concluded that the trial court's order dismissing defendant's case was proper, there is no meaningful relief that we could provide defendant.

We affirm.

/s/ Henry William Saad
/s/ Jane E. Markey
/s/ Patrick M. Meter