

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA DIVELY, Personal Representative of
the Estate of MICHAEL DIVELY, Deceased,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellee.

UNPUBLISHED

June 22, 2004

No. 242288

Oakland Circuit Court

LC No. 1997-547836-NO

Before: Wilder, P.J., and Griffin and Cooper, JJ.

COOPER, J. (*dissenting*).

I must respectfully dissent from the opinion of my colleagues, as I would find that the trial court abused its discretion in failing to strike James Lighthall as an expert witness or to impose other sanctions on defendant for its continuous abuse of discovery.

Defendant willfully failed to supplement interrogatory answers regarding expert witnesses and to supplement discovery requests. Defendant also willfully withheld Dr. Lighthall's identity, qualifications and his report and opinions for eighteen months between the declaration of a mistrial and the retrial in this case. Defendant knew Dr. Lighthall was to serve as an expert witness at the time of the original trial, but withheld his work papers and opinions from plaintiff and falsely identified him as a rebuttal witness on the final pretrial witness list. Defendant did not disclose Dr. Lighthall as an expert witness until the filing of an amended witness list, without the court's permission, one month prior to retrial. Defense counsel did not inform plaintiff of his intent to call Dr. Lighthall until the fourth day of trial and withheld Dr. Lighthall's report, which did not include his opinions, until this late date.

Not only did the trial court admit Dr. Lighthall's testimony over plaintiff's objections, but it also erroneously found that plaintiff had been notified of his status as an expert witness prior to the original trial date. Defendant's continuous dereliction of its duty to supplement discovery was egregious and certainly should have been sanctioned. I cannot find the trial court's failure to strike Dr. Lighthall's testimony proper in light of the serious and continued nature of defendant's discovery violations and the trial court's own erroneous finding of fact. I would, therefore, remand for a new trial.

/s/ Jessica R. Cooper