

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE BEAGLE,

Plaintiff-Appellee,

v

GENERAL MOTORS CORPORATION and
CINDY KAYANEK,

Defendants-Appellants,

and

BILLY BURNS and KEN HORTON,

Defendants-Appellees.

UNPUBLISHED
November 4, 2004

No. 245519
Ingham Circuit Court
LC No. 98-087845-CZ

Before: Murray, P.J., and Markey and O’Connell, JJ.

PER CURIAM.

Defendant General Motors Corporation (GM) appeals by leave granted an order sanctioning GM for filing a motion for summary disposition approximately nine months after the deadline in the court’s stipulated scheduling order. The court awarded sanctions to plaintiff for the attorney fees and costs plaintiff incurred between the motion deadline and the date GM’s motion was granted. We affirm in part and reverse in part.

GM challenges the sanctions because they were ordered under the court’s inherent authority rather than under a court rule or statute. A trial court’s authority to impose attorney fee “awards as a sanction is a question of law, subject to review de novo.” *Persichini v Beaumont Hospital*, 238 Mich App 626, 637; 607 NW2d 100 (1999). “An exercise of the court’s inherent power may be disturbed only upon a finding that there has been a clear abuse of discretion.” *Id.* at 642. “This Court has repeatedly recognized that a trial court has inherent authority to impose sanctions on the basis of the misconduct of a party or an attorney.” *Id.* at 639 (citations and footnote omitted).

[O]ur Supreme Court has “recognized the inherent power of a court to control the movement of cases on its docket by a variety of sanctions.” *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963). Furthermore, MCL 600.611; MSA

27A.611 provides, “Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments.”

In *Cummings* [*v Wayne Co*, 210 Mich App 249, 252-253; 533 NW2d 13 (1995)], this Court held that a court has the inherent authority to dismiss a lawsuit as a sanction for litigation misconduct. It therefore follows that the less severe sanction of an assessment of attorney fees is within a court’s inherent power as well. [*Id.* at 640.]

The trial court appointed a special master to hear argument and make recommendations to the court regarding the case evaluation sanctions against plaintiff and the sanctions against GM. In its order, the trial court stated that it would adopt the report of the special master “unless any party objects to same, in which case a hearing *shall* be conducted before this court, as to said objection(s).” [emphasis added.] The special master submitted his report and recommendations to the court on July 3, 2002. GM filed objections and amended objections to the special master’s recommendations; however, the trial court did not allow GM a hearing on its objections.

Although GM conceded the court’s inherent authority to sanction a party for misconduct at a sanctions hearing conducted by a special master appointed by the court, it asserted below and on appeal that its conduct did not qualify as misconduct.

The lower court did not abuse its discretion in finding that GM’s actions merited sanction. *Id.* at 642. Without offering any justification for its late action, and on the eve of a lengthy civil trial, GM filed a dispositive motion that very likely would have obviated entirely a trial had GM’s motion been timely. A court is not powerless to sanction flagrant violations of its orders, despite the lack of a specific court rule on point, especially when those violations consume and waste the court’s time and the opponent’s resources. *Id.* at 639-640.

GM also challenges the court’s decision to adopt the special master’s method of estimating the amount of the sanction. “We review a trial court’s determination of the amount of sanctions imposed for an abuse of discretion.” *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

In the report to the court, the special master noted that “designating certain hours as work performed solely for the purpose of achieving a favorable result against General Motors would be an exercise in speculation, if not pure guesswork,” in part because plaintiff failed to present “a clear and concise evidentiary offer with regard to what was done, or not done, by plaintiff’s counsel [that] would not have been necessary had General Motors been out of the case by the deadline for summary disposition motions.” The special master decided, therefore, to base the recommended sanction on the potential recovery from each defendant, applying a percentage to each one. The special master estimated that two-thirds of the work plaintiff’s counsel performed during the sanctions period would not have been necessary had GM been timely with its motion for summary disposition.

Although the trial court indeed had the inherent authority to sanction GM for its late motion, we conclude that it abused its discretion by simply adopting the special master’s

findings and conclusions after GM invoked its right to object and require a hearing. The special master arbitrarily allocated costs based on the amounts plaintiff hoped to recover from the various defendants. But it is plaintiff's burden to prove, not speculate, as to the difference in fees plaintiff's counsel would have charged had GM's motion for summary disposition been filed and granted sooner. Consequently, the court abused its discretion by adopting the special master's report because the court's order provided for a hearing if any party objected to the special master's report. GM, in fact, objected. We therefore remand so that GM may have a hearing on the objections it raised to the special master's method of calculating the appropriate sanction against it.

We affirm in part, reverse in part and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell