

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MITCHELL STEVENSON and BETHANY  
STEVENSON,

UNPUBLISHED  
January 10, 2006

Plaintiffs-Appellants,

and

BLUE CROSS BLUE SHIELD,

Intervening Plaintiff,

v

No. 255973  
Grand Traverse Circuit Court  
LC No. 03-022640-NH

MICHAEL A. NIZZI, D.O., and MUNSON  
MEDICAL CENTER,

Defendants-Appellees.

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Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In this medical malpractice case, plaintiffs appeal as of right from the trial court's orders striking their expert witnesses and granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from an emergency appendectomy performed on plaintiff Mitchell Stevenson by defendant Dr. Nizzi, at defendant Munson Medical Center. Plaintiff suffered various post-operation complications. Thereafter, plaintiffs filed suit alleging that Nizzi committed medical malpractice and that Munson both shared vicariously Nizzi's liability and failed in its own right to select and supervise its employees properly.

Discovery was complicated by various scheduling problems, in response to which the trial court issued an order whose provisions included that "if Plaintiffs' counsel does not provide dates for the depositions of their experts within fourteen (14) days, defense counsel may file a Motion to Strike the Testimony of Plaintiffs' Experts . . . ." The order was dated December 16, 2003, by its preparer, but the date "12/19/03" is penciled in below the judge's signature. A date stamp indicates a filing date of December 22, 2003.

Plaintiffs relied on the latter date in calculating that the deadline for providing deposition dates was January 5, 2004, and faxed a letter to defendants providing the deposition dates on that

day. Defendants moved to strike plaintiffs' experts on the ground that the court-ordered fourteen-day deadline for deposition dates began to run on December 19, 2003, and thus that plaintiffs' failure to provide the information by January 2, 2004, violated the order. The trial court granted defendants' motion. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted the motion, concluding that without their experts, plaintiffs could not establish a breach of defendants' duty of care.

We review a trial court's decision regarding the appropriate remedy for failure to comply with a discovery order for an abuse of discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997). We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

"[A]n abuse of discretion will be found when the decision is 'so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.'" *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). Put another way, "a court abuses its discretion when an unprejudiced person considering the facts upon which the trial court acted, would say that there was no justification or excuse for the ruling made." *Gilbert v DaimlerChrysler*, 470 Mich 749, 761-762; 685 NW2d 391 (2004) (internal quotation marks, brackets, and citations omitted).

MCR 2.602(A)(1) states that all orders "must be in writing, signed by the court and dated with the date they are signed," and subrule (A)(2) states that "[t]he date of signing an order or judgment is the date of entry." The trial court signed the order demanding action from plaintiffs within fourteen days on December 19, 2003. Because the order was entered December 19, 2003, the fourteen days began to run on that date, making the applicable deadline January 2, 2004.

Plaintiffs protested that the delay was minor and caused defendants no prejudice. Although plaintiffs now attempt to present the procedural history of this case, including the delays in satisfying discovery obligations, in a light sympathetic to themselves, they do not assert that the trial court clearly erred in regarding this final missed deadline as but the last in a long pattern of discovery delays and failures for which they were at least partly responsible.

In light of the history of such failures, and plaintiffs' plain failure to provide deposition dates for their experts within fourteen days of entry of the order demanding that action—which also expressly advised that the remedy of striking the experts was looming—the trial court's decision to strike those witnesses cannot be considered an abuse of discretion. Summary disposition was proper.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot