

STATE OF MICHIGAN
COURT OF APPEALS

PAUL WILLIAM SCHOENEMANN,

Plaintiff-Appellee,

v

ANTHONY STEVEN BRENNEN,

Defendant-Appellee,

and

DAIMLERCHRYSLER CORP.,

Defendant,

and

CORPORATE AUTO RESOURCE
SPECIALISTS, a/k/a KEN TOMPOR AUTO
BROKER & LEASING, LTD,

Defendant-Appellant.

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant Corporate Auto Resource Specialists, Inc. (CARS) appeals by leave granted from the trial court's order granting plaintiff Paul Schoenemann's motion to strike defendant's MCR 2.116(C)(8) motion for summary disposition as untimely. We reverse.

Defendant rents and sells luxury cars to corporations and other businesses in southeastern Michigan.¹ Codefendant Anthony Brennan was defendant's employee.² Plaintiff was Brennan's

¹ We refer to appellant CARS as "defendant" in this opinion.

roommate. On the evening of Friday, November 12, 1999, without defendant's permission, Brennen and plaintiff went to CARS headquarters and took a Dodge Viper owned by DaimlerChrysler from the garage where rental cars were stored.³ Brennen and plaintiff drove to Detroit, visited several bars, and became intoxicated. As the men drove back to CARS headquarters, Brennen lost control of the vehicle and struck a fence. Brennen and plaintiff suffered extensive injuries.⁴

In his complaint, plaintiff alleged respondeat superior liability against defendant. On February 18, 2004, on the agreement of all parties, the trial court, Judge Richard D. Kuhn presiding, entered a scheduling order requiring that dispositive motions be heard by May 31, 2004. On September 8, 2004, defendant moved for partial summary disposition of plaintiff's respondeat superior claim pursuant to MCR 2.116(C)(8).⁵ Judge Kuhn entered a scheduling order with regard to defendant's motion for summary disposition in October 2004. Judge Kuhn retired in December 2004, and Oakland Circuit Judge Michael Warran was assigned this case. On January 31, 2006, Judge Warren granted plaintiff's motion to strike defendant's MCR 2.116(C)(8) motion as untimely. This Court granted defendant leave to appeal the entry of this order.

Defendant argues that the trial court erred when it refused to consider its MCR 2.116(C)(8) motion for summary disposition on the merits because it was filed after the May 31, 2004, deadline for filing dispositive motions established in the February 18, 2004, scheduling order. We conclude that Judge Warren clearly erred when he refused to consider defendant's motion for summary disposition because Judge Kuhn, in his October 2004 scheduling order for this motion, implicitly chose to hear defendant's motion on the merits, and Judge Warren was bound by this decision.

MCR 2.116(D)(3) permits parties to raise motions under MCR 2.116(C)(8) or (C)(10) "at any time." However, the trial court may issue a scheduling order to "facilitate the progress of the case" MCR 2.401(B)(2)(a). In a scheduling order, the trial court "shall establish times for events the court deems appropriate . . .," including for "the amendment of pleadings, adding of

(...continued)

² Brennen was a detailer, cleaning, washing, and polishing the rental cars.

³ Plaintiff's claims against DaimlerChrysler were dismissed, and DaimlerChrysler is not a party to this appeal.

⁴ Brennen later pleaded no contest to unlawfully taking and using an automobile. He is not a party to this appeal.

⁵ Although defendant presented an MCR 2.116(C)(8) motion for summary disposition before the trial court, it argued that the trial court should have granted its motion because Brennen had stolen the Viper and no question of fact existed concerning defendant's respondeat superior liability for Brennen's actions. We note that this argument might have been more appropriately raised in an MCR 2.116(C)(10) motion for summary disposition. However, as will be discussed *infra*, Judge Kuhn had the discretion to consider both MCR 2.116(C)(8) and (C)(10) motions on their merits after the deadline set in the scheduling order had passed. Therefore, the status of defendant's motion as an MCR 2.116(C)(8) or (C)(10) motion for summary disposition does not affect our analysis of this issue.

parties, or filing of motions” MCR 2.401(B)(2)(a) and (a)(ii). Furthermore, a trial court has the inherent power to control the movement of cases on its docket. *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963). Therefore, under MCR 2.401(B)(2)(a)(ii), “the trial court has the discretion to decline to entertain motions beyond the stated deadline.” *Kemerko Clawson, LLC v RxIV Inc*, 269 Mich App 347, 349; 711 NW2d 801 (2005). However, if the trial court has the discretion to *decline* to entertain motions beyond the stated deadline, it also has the discretion to *accept* motions filed after the deadline established by a scheduling order. We may only disturb the trial court’s exercise of its inherent power if we find that the trial court clearly abused its discretion. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 642; 607 NW2d 100 (1999).

On October 14, 2004, Judge Kuhn entered a scheduling order for defendant’s MCR 2.116(C)(8) motion. Although the trial court noted the objection to the motion previously filed by plaintiff, in which plaintiff maintained that defendant’s motion was untimely and should be struck, the scheduling order does not indicate that Judge Kuhn planned to separately consider plaintiff’s procedural objection. Instead, Judge Kuhn established in the scheduling order the date by which plaintiff was required to file his response to defendant’s motion and the date on which defendant’s motion would be heard. Finally, Judge Kuhn noted that “Judge Michael Warren will be reviewing and deciding the instant Motion for Summary Disposition.” By scheduling defendant’s motion for a hearing on the merits, and by specifying that Judge Warren would review and decide the “instant Motion for Summary Disposition,” not whether the motion was timely filed and should be considered on the merits by the trial court, Judge Kuhn, in an exercise of his discretion, waived the February 18, 2004, scheduling order requirement that defendant’s dispositive motion must have been filed by May 31, 2004.

We find that Judge Kuhn did not clearly abuse his discretion when he waived the requirement that defendant’s motion be filed by the date set in the scheduling order and chose to consider defendant’s motion on its merits. Permitting plaintiff’s claim of respondeat superior to proceed to trial if plaintiff has failed to even state a claim for which the trial court could grant relief or to present a genuine issue of material fact would not promote the just, speedy, and efficient resolution of this action. Choosing to hear defendant’s motion on the merits in an attempt to more efficiently resolve the case and avoid a potentially needless trial is an appropriate act of judicial discretion.

After Judge Warren was assigned this case, he chose to reconsider plaintiff’s objection to defendant’s motion for summary disposition on grounds that it was untimely and to strike it for that reason, although Judge Kuhn had previously waived the requirement that the motion be filed in a timely manner and indicated that the disposition of the motion would be made on the merits. Because MCR 2.613(B) only permits a subsequent trial judge to set aside a judgment or order to correct an *error* by the prior judge in the same action, and Judge Kuhn’s exercise of discretion in this case does not constitute an error, Judge Warren had no authority to reconsider Judge Kuhn’s waiver of the requirement that defendant’s motion be filed by the date set forth in the scheduling order.

MCR 2.613(B) provides:

Correction of Error by Other Judges. A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only

by the judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

Court rules are subject to the same rules of construction as statutes. *In re KH*, 469 Mich 621, 628; 677 NW2d 800 (2004). If the language of a court rule is clear and unambiguous, we must enforce the rule as written. *People v Venticinque*, 459 Mich 90, 99-100; 586 NW2d 732 (1998).

Because Judge Kuhn retired shortly after issuing the October 2004 scheduling order, he was “unable to act” and Judge Warren was “otherwise empowered to rule in the matter.” According to the text of the rule itself, under these circumstances, Judge Warren could issue an order vacating or setting aside a judgment or order previously issued by Judge Kuhn. However, the scope of a statute and, similarly, of a court rule, is limited by its title. *Bankhead v Mayor of River Rouge*, 35 Mich App 7, 15; 192 NW2d 289 (1971), *aff’d* 387 Mich 610 (1972). The title of MCR 2.613(B) indicates that the rule permits a succeeding judge to vacate or set aside a preceding judge’s order only if the preceding order was erroneous.

However, Judge Kuhn’s waiver of the scheduling order requirement that defendant’s motion be filed by a particular date was an exercise of his discretion, not an error. Accordingly, MCR 2.613(B), which gives a subsequent trial judge the authority to correct *errors* by the prior judge in a given case, does not apply to the circumstances of this case. Judge Warren had no authority to essentially set aside Judge Kuhn’s waiver of the timeliness requirement, and his order striking defendant’s motion for summary disposition as untimely was in error. Because Judge Warren lacked the authority to reconsider whether defendant’s motion should have been stricken because it was untimely filed, we need not consider the appropriateness of his reasons for granting plaintiff’s motion to strike defendant’s motion for summary disposition.⁶

Defendant also argues that the trial court ignored the law of the case when it granted plaintiff’s motion to strike defendant’s motion for summary disposition. However, defendant fails to identify a previous ruling by this Court or our Supreme Court *in the present case* that the trial court failed to apply. See *Poirier v Grand Blanc Twp (After Remand)*, 192 Mich App 539,

⁶ Although not necessary to the disposition of this motion, we wish to address the trial court’s conclusion that it need not consider defendant’s MCR 2.116(C)(8) motion on its merits because defendant failed to move to adjourn pursuant to MCR 2.503(B). An adjournment refers to putting off a court session or other meeting or assembly until a later time. Black’s Law Dictionary (8th ed). “[MCR 2.503] applies to adjournments of trials, alternative dispute resolution processes, pretrial conferences, and all motion hearings.” MCR 2.503(A). Because adjournments apply to motion *hearings*, defendant was not required to file a motion for adjournment before the trial court could consider his MCR 2.116(C)(8) motion on the merits.

546; 481 NW2d 762 (1992). Accordingly, we need not consider the issue further.⁷ See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Donald S. Owens

⁷ In its reply brief, defendant argues that, pursuant to the doctrine of stare decisis, the trial court should have applied *Yee* and *Gerling* when considering whether to grant plaintiff's motion to strike. Yet defendant failed to raise this issue in its statement of questions presented. MCR 7.212(C)(5). Accordingly, we need not consider the issue further. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997).