

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN AXLE & MANUFACTURING
HOLDINGS, INC., and AMERICAN AXLE &
MANUFACTURING, INC.,

UNPUBLISHED
December 4, 2007

Plaintiffs-Appellees,

v

No. 270043
LC No. 03-333224-CZ

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.,

Defendant-Appellant,

and

RAQUEL RODRIQUEZ,

Defendant-Appellee.

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant, National Union Fire Insurance Company of Pittsburgh, PA, (National Union), appeals as of right from a default judgment granted in favor of plaintiff, American Axle & Manufacturing Holders, Inc., and American Axle & Manufacturing, Inc., (American Axle), and defendant Raquel Rodriguez in this declaratory judgment action. Because the trial court did not abuse its discretion when it delayed ruling on National Union's motion for summary disposition until the close of discovery, and because National Union flagrantly and wantonly refused to facilitate discovery, we affirm.

I

On September 15, 1999, Raquel Rodriguez sustained serious injuries when her hair became entangled in a conveyor system while working as an employee at American Axle. Rodriguez filed suit against American Axle in a complaint dated September 9, 2002 (Rodriguez Lawsuit) which became the underlying action in the instant case. During the pendency of this declaratory action, the underlying action proceeded to case evaluation, pursuant to MCR 2.403.

Case evaluation resulted in an award in favor of Rodriguez in the amount of \$8,500,000 against American Axle. Rodriguez and American Axle both accepted the \$8,500,000 award and the trial court entered a judgment in favor of Rodriguez and against American Axle in the amount of \$8,500,000. Thereafter, Rodriguez received \$1,100,000 in partial satisfaction of the judgment, leaving a balance of \$7,400,000 due and owing to Rodriguez.

National Union refused to provide American Axle a defense or insurance coverage under American Axle's umbrella insurance policy with National Union in the Rodriguez Lawsuit. American Axle filed a complaint on October 3, 2003 in Wayne Circuit Court seeking declaratory relief. Amongst other declarations, American Axle asked the court to declare National Union responsible for defending it in the underlying lawsuit, and obligated to indemnify or otherwise satisfy any judgment against American Axle in the Rodriguez Lawsuit for any amounts above \$1,000,000 through \$25,000,000.

National Union had previously filed its own declaratory judgment action in federal court resulting in American Axle's complaint being removed from Wayne Circuit Court to federal court. However, the federal court dismissed and remanded the action back to the Wayne Circuit Court. National Union filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) asserting that the dispute between American Axle and National Union raised only issues of law and that it was entitled to summary disposition relying on *American Bumper v National Union*, 261 Mich App 367; 683 NW2d 161 (2004). Both American Axle and Rodriguez urged the court to adjourn arguments on National Union's motion until discovery, and the trial court agreed. However, because of the circumstances of the case, the trial court ultimately never addressed National Union's motion for summary disposition and instead granted default judgment in favor of American Axle and Rodriguez against National Union for the sum of \$7,500,000. This appeal followed.

II

Generally, in order to preserve an issue for appeal, it must be raised before and decided by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). The central issue of whether the trial court erred when it entered default judgment against National Union as a discovery sanction is preserved for this Court's review because the issue was raised and addressed by the trial court. *Id.* However, to the extent it is necessary that we address the substance of National Union's motion for summary disposition, it is not preserved for our review because although National Union brought the motion, the trial court never addressed the merits of the motion. *Id.*

A trial court's decision to impose sanctions is reviewed for an abuse of discretion. *Borgess Medical Center v Resto*, 273 Mich App 558, 582; 730 NW2d 738 (2007); *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 450; 540 NW2d 696 (1995). This Court reviews a trial court's decision to grant or deny a motion for a default judgment as a sanction for discovery abuses for an abuse of discretion. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 89; 618 NW2d 66 (2000). An abuse of discretion occurs when the trial court's decision results in an outcome falling outside the range of principled outcomes. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006); *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). If the trial court selects a principled outcome, there is no abuse of discretion, and the reviewing court must defer to the trial court's ruling. *Maldonado, supra.*

III

National Union first argues that the trial court erred when it entered default judgment against it as a discovery sanction because the trial court should have ruled on its outstanding motion for summary disposition instead of allowing unnecessary discovery to proceed. National Union contends that it was entitled to summary disposition as a matter of law on the basis of the undisputed facts, unambiguous policy language, and controlling legal precedent, specifically, *American Bumper v National Union*, 261 Mich App 367; 683 NW2d 161 (2004). National Union specifically argues that as a matter of law, the policy at issue does not provide coverage to American Axle for injuries sustained by its employees during the course of their employment. And, because the only matter before the trial court was a narrow issue of law—whether the allegations of the Rodriguez Lawsuit fell within the scope of the National Union policy’s coverage—no discovery was necessary for the trial court to determine if National Union owed a duty to defend.

National Union brought its motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). American Axle and Rodriguez urged the trial court to rule on National Union’s motion after the November 14, 2004 discovery cutoff date because fact issues existed regarding subjective intent. The trial court adjourned hearing National Union’s motion until September 24, 2004 stating that, “if there are persons who should be in the opinion of counsel, deposed before the hearing on the motion for summary disposition, that would give you time to depose those individuals.” However, due to National Union’s dilatory conduct and outright refusal to facilitate discovery, scheduling orders had to be amended and the trial court rescheduled the hearing on National Union’s motion for summary disposition for the later part of April or the first part of May 2005. Ultimately though, because it granted American Axle’s dispositive motions for default judgment, the trial court never further addressed or decided the merits of National Union’s summary disposition motion.

National Union faces roadblocks in its attempts to have this Court review this issue. First, this issue is unpreserved for this Court’s review because the trial court never addressed National Union’s motion for summary disposition. *Fast Air, Inc, supra*. Appellate review is normally limited to issues decided by the trial court. *Candelaria v B C Gen Contractors, Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999). Nonetheless, this Court “may consider an issue not decided by the lower court if it involves a question of law and the facts necessary for its resolution have been presented.” *Michigan Twp Participating Plan v Fed Ins Co*, 233 Mich App 422, 435-436; 592 NW2d 760 (1999).

Also, if summary disposition is granted before discovery on a disputed issue is complete, it is considered premature. *Oliver v Smith*, 269 Mich App 560, 567; 715 NW2d 314 (2006). But, summary disposition may be appropriate “if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party’s position.” *Id.* (internal citations and quotation marks omitted). Thus, the trial court has broad discretion to delay hearing motions for summary disposition until after the close of discovery especially in cases such as the instant case where the moving party brought its motion under both MCR 2.116(C)(8) and (C)(10). Here, because the trial court allowed discovery to commence, it believed that further discovery stood a reasonable chance of uncovering factual support for American Axle and Rodriguez’s position and delaying hearing the motion was within its discretion. *Id.*

Next, generally, a default judgment settles the issue of liability and the defaulted party is precluded from relitigating that issue. *Wood v DAIIE*, 413 Mich 573, 578; 321 NW2d 653 (1982); *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 79; 618 NW2d 66 (2000). When the trial court entered a default judgment against National Union, it lost standing to contest the factual allegations in American Axle's complaint. *See Ackron Co v Oakland Co*, 108 Mich App 767, 775; 310 NW2d 874 (1981). National Union vehemently argued below and now again on appeal that it was entitled to summary disposition as a matter of law at the outset of litigation on this matter on the basis of the undisputed facts, unambiguous policy language, and controlling legal precedent, namely, *American Bumper*, *supra*.¹ Therefore, if the trial court properly entered default then the issue of liability was settled against National Union and it may not attempt to relitigate the issue by seeking to have this Court in essence, grant its motion for summary disposition.

On the other hand, MCR 2.116(I)(1) directs a court to "render judgment without delay" when the pleadings and facts show that a party is entitled to judgment as a matter of law. MCR 2.116(I)(1) specifically provides: "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." MCR 2.613(A) also binds this Court and provides:

An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

Thus, it appears that if the trial court's choice not to hear National Union's motion deprived National Union of a "judgment without delay" in its favor pursuant to MCR 2.116(C)(8) and (I)(1), the court's subsequent granting of default judgment on procedural grounds would result in an outcome that is inconsistent with substantial justice. MCR 2.613(A). We believe that an outcome inconsistent with substantial justice would not be a principled outcome and would result in a conclusion that the trial court abused its discretion. So, despite the numerous roadblocks, we must review this issue.

Again, although the trial court never decided whether American Axle pleaded a cognizable claim, this Court can overlook the preservation requirement to consider this issue of law. *Michigan Twp Participating Plan*, *supra*. Although National Union brought its motion under both MCR 2.116(C)(8) and (C)(10), because National Union argues that it was entitled to judgment as a matter of law on the pleadings alone in the context of this issue, this Court should assess the motion under only MCR 2.116(C)(8). A motion under this subrule tests the legal sufficiency of the plaintiff's complaint on the pleadings alone. *Maiden v Rozwood*, 461 Mich

¹ At the hearing on American Axle's motion to adjourn the hearing on National Union's motion for summary disposition, counsel for National Union stated there was no need for discovery on this purely legal issue because "all we have to do is cite one case and we feel we win."

109, 119-120; 597 NW2d 817 (1999). In assessing a motion brought under MCR 2.116(C)(8), all factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

“Interpretation of an insurance policy ultimately requires a two-step inquiry: first, a determination of coverage according to the general insurance agreement and, second, a decision regarding whether an exclusion applies to negate coverage. This Court has held that an insurance policy provision is valid ‘as long as it is clear, unambiguous and not in contravention of public policy.’” *Auto-Owners v Harrington*, 455 Mich 377, 382; 565 NW2d 839 (1997) (citations omitted).

“An insurance policy is an agreement between parties that a court interprets ‘much the same as any other contract’ to best effectuate the intent of the parties and the clear, unambiguous language of the policy.” *Harrington, supra* at 381, quoting *Auto-Owners v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Thus, “the court looks to the contract as a whole and gives meaning to all its terms.” *Harrington, supra*. An unambiguous contract must be construed according to its plain and ordinary meaning. *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). It is the insured’s burden to prove that coverage exists. *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 161 n 6; 534 NW2d 502 (1995). Any doubt regarding insurance coverage must be resolved in the insured’s favor. *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 448; 550 NW2d 475 (1996). If the insurance contract contains definitions, they must be used when interpreting the policy language. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997).

Here, in its motion for summary disposition, National Union relied on *American Bumper, supra*, and argued that:

6. As a matter of law, . . .the National Union policy does not provide insurance coverage to American Axle for the Rodriguez action because:

(a) The National Union policy explicitly limits insurance coverage to bodily injury that is “neither expected nor intended from the standpoint of the Insured.” (Definition of “Occurrence” contained in the National Union policy). Under Michigan law, it is impossible for an employer to have “specifically intended an injury” under the intentional tort exception to the WDCA without also having “expected” bodily injury. As such, it is impossible for the “neither expected nor intended” requirement in the definition of “Occurrence” to be met and, accordingly, there is no insurance coverage available to American Axle for the Rodriguez action as a matter of law. *American Bumper, supra* at 378-379.

American Axle’s complaint counters National Union’s argument alleging that the policy language National Union relied on was inapplicable, specifically stating:

15. The exclusion under Subsection O of Section V of the Policy relied upon by Defendant National Union to deny coverage is inapplicable as the Complaint in

the underlying Rodriguez Lawsuit contains only allegations against Plaintiff American Axle Mfg. of negligence and allegations purporting to avoid the exclusivity of remedy provision of the Michigan Workers Compensation Act, MCL 418.131, but fails to allege any expectation of an injury or intent to injure on the part of the insured Plaintiff American Axle Manufacturing.

Dovetailing American Axle's contention, Rodriguez asserted before the trial court that *American Bumper, supra*, was distinguishable because questions of fact existed regarding American Axle's subjective intent from the standpoint of the insured to intentionally injure Rodriguez.

The *American Bumper* Court counsels that,

"The intentional tort exception allows imposition of liability under two distinct sets of circumstances. First, the employer specifically intended the injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149; 551 NW2d 132 (1996). The second set of circumstances is known as the legislatively prescribed "inferred intent" tort." [*American Bumper, supra* at 373.]

The complaint in the instant case reveals that Rodriguez relied on the second exception, that American Axle "had actual knowledge that an injury was certain to occur, yet willfully disregarded that knowledge." This is similar to one of the plaintiffs in *American Bumper*.

In *American Bumper, supra* at 380, this Court found that the policy exclusion in that case barred coverage for the underlying claims. In *American Bumper*, the excess umbrella liability policy provided under the heading "Exclusions" as follows:

This policy does not apply:

* * *

15. to any liability resulting from personal injury or property damage which is expected or intended *by the insured*, except that this Exclusion does not apply to Personal Injury resulting from the use of reasonable force to protect persons or property. [*American Bumper, supra* at 380, emphasis added.]

In the present case, under the heading "Exclusions" the contract stated:

O. Bodily Injury or Property Damage expected or intended *from the standpoint of the Insured*. [Emphasis added.]

Thus, the language that the trial court was faced with in the instant case was different than the exclusion language in *American Bumper, supra*. And therefore, because the exclusionary language was different, the ultimate conclusion in *American Bumper* that the exclusion language barred coverage was not necessarily dictated here. Because the policy exclusion language, "*from the standpoint of the Insured*," requires a subjective analysis, discovery may lead to evidence that would address that subjective intent. *Allstate Ins Co v*

McCarn, 466 Mich 277, 284; 645 NW2d 20 (2002) (subjective analysis for “from the standpoint of the insured” exclusion language), compare to *Allstate Ins Co v Freeman*, 432 Mich 656, 677; 443 NW2d 734 (1989) (objective analysis for “by the insured” exclusion language). While it is the insured’s burden to prove that coverage exists, *Heniser, supra*, this Court is not deciding whether coverage exists here. We are only narrowly deciding whether when accepting all factual allegations as true, as well as any reasonable inferences or conclusions that can be drawn from the facts, can American Axle’s complaint withstand a motion brought under MCR 2.116(C)(8). *Radtko, supra*.

After reviewing the allegations in the well-pleaded complaint, we conclude that National Union’s motion pursuant to MCR 2.116(C)(8) should not have been granted in the trial court because the claim is not so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade, supra*. In other words, under the specific language of the contract at issue, which is distinguishable on its face from the language relied on in *American Bumper, supra*, discovery could have reasonably revealed a genuine issue of material fact regarding the specific circumstances surrounding American Axle’s subjective intent with regard to Rodriguez’s injury. As such, National Union was not entitled to judgment without delay pursuant to MCR 2.116(I)(1) and accordingly the trial court did not abuse its discretion when it delayed deciding National Union’s motion for summary disposition until the close of discovery.

IV

National Union also argues that the trial court erred when it entered default judgment against it as a discovery sanction because it complied with discovery requests and orders despite the fact that the discovery requests were irrelevant, vexatious, and harassing, and, considering all the circumstances, National Union’s conduct was neither willful, nor flagrant, and does not justify the imposition of such a drastic remedy which should only be used in the most egregious circumstances.

Trial courts possess the inherent authority to sanction litigants and their counsel for failing to abide by court orders. *Maldonado, supra* at 388. MCR 2.313(B)(2)(c) expressly authorizes a trial court to enter an order of dismissal or default judgment against a party who fails to obey an order or provide discovery. *Thorne v Bell*, 206 Mich App 625, 632; 522 NW2d 711 (1994). However, the trial court should carefully examine the circumstances before imposing the drastic sanction of dismissal. *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 86; 618 NW2d 66 (2000). This Court has observed that,

[t]he Michigan Court Rules at MCR 2.313(B)(2)(c) explicitly authorize a trial court to enter an order dismissing a proceeding or rendering a judgment by default against a party who fails to obey an order to provide discovery. The trial court should carefully consider the circumstances of the case to determine whether a drastic sanction such as dismissing a claim is appropriate. Severe sanctions are generally appropriate only when a party flagrantly and wantonly refuses to facilitate discovery, not when the failure to comply with a discovery request is accidental or involuntary. The record should reflect that the trial court gave careful consideration to the factors involved and considered all its options in determining what sanction was just and proper in the context of the case before it.

[*Kalamazoo Oil, supra* at 86-87, quoting *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999) (citations omitted).]

The factors that should be considered in determining an appropriate sanction include:

“(1) [W]hether the violation was wilful or accidental; (2) the party’s history of refusing to comply with discovery requests (or refusal to disclose witnesses); (3) the prejudice to the [other party]; (4) actual notice to the [other party] of the witness and the length of time prior to trial that the [other party] received such actual notice; (5) whether there exists a history of [the party’s] engaging in deliberate delay; (6) the degree of compliance by the [party] with other provisions of the court’s order; (7) an attempt by the [party] to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice.” [*Bass, supra* at 26-27, quoting *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990) (alterations in original).]

Again, “a default entered as a sanction is a means to penalize a party for failure to comply with the trial court’s directives and, as noted above, should be entered only in the most egregious circumstances.” *Kalamazoo Oil, supra* at 87.

American Axle initiated discovery on July 26, 2004 when it issued its first set of interrogatories and request for production of documents to National Union. American Axle sought the claims file in this declaratory action. National Union refused to produce the file. American Axle filed a motion to compel discovery of National Union on August 27, 2004 which the court heard on September 10, 2004. During argument on the motion, National Union guaranteed victory in the matter via its pending motion for summary disposition and argued that discovery did not matter. Upon questioning however, National Union agreed that “[t]he claims file [was] absolutely pertinent, absolutely relevant, absolutely critical to the issues in the Dec Action” The trial court ordered National Union to turn the claims file over to opposing counsel within seven days on August 17, 2004. Despite agreeing that it was critical to the matter, being ordered to turn it over, and the trial court accommodating it by providing language to be used in a protective order National Union demanded, National Union still had not turned the claims file over by October 15, 2004. On October 22, 2004, the trial court issued an order ordering National Union to provide the full and complete claims file.

Regarding interrogatories propounded in July 2004 by American Axle, National Union failed to answer many of the requests, improperly objected to, and failed to cure deficient responses, despite being ordered to by the trial court. On October 6, 2004, American Axle filed a motion to compel discovery of National Union addressing three sets of discovery, two dated July 26, 2004 and one dated August 18, 2004. The trial court heard the motion on October 15, 2004 and found that National Union had provided inappropriate responses to the July 26, 2004 requests and that it had not responded to the August 18, 2004 discovery requests. Finding that National Union did not answer on a timely basis and gave improper responses under the court rules, it gave National Union a second opportunity to answer. In doing so, the trial court ordered National Union to respond “directly without objection.” The trial court explained the importance of properly responding to the inquires and clearly warned National Union that not responding appropriately once again could result in sanctions. The court also issued a written order once again ordering National Union to respond fully and completely to the three discovery requests.

Following the trial court's mandate to respond "directly without objection" to the discovery request, National Union sent an email to opposing counsel dated October 20, 2004 indicating that it would produce "the requested documents and the supplemental answers to Axle's voluminous discovery requests on Friday, October 22nd", as directed by the Court." But it further stated:

On Friday, you will see that we have removed the "generic" objections to Axle's discovery request. In limited situations, specific objections are raised. We will not waive the right to rely upon these objections. Particularly where the language proposed by Axle is inaccurate, out of context, or premised upon misrepresentations to the Court. Regardless, you will find that our responses are thorough.

National Union filed three discovery responses on October 22, 2004. A review of the responses shows that while National Union did respond to some of the questions, the answers provided were generally not responsive and were replete with objections despite the court's previous ruling. Again, National Union answered some questions by asserting that it had a pending motion for summary disposition and reserved the right to further supplement answers to interrogatories, apparently awaiting the court's ruling on the motion for summary disposition. Clearly, National Union was intentionally, flagrantly, and wantonly disobeying a direct order of the trial court.

Following the receipt of National Union's inappropriate responses, American Axle filed its first motion for default judgment on November 1, 2004, based on National Union's untimely and inappropriate discovery responses. On November 10, 2004, American Axle filed a second motion for default judgment adding assertions that National Union failed to produce current employees identified in supplemental responses, failing to provide dates for the depositions of three essential witnesses despite repeatedly promising to do so, and failing to provide critical contact information for current and former employees and other witnesses.

At a hearing on November 19, 2004, the trial court continued the hearing on the default motions and instead entertained argument on a motion for an amended scheduling order. The trial court extended discovery and urged the parties that discovery should continue. The trial court once again stated that it would hear National Union's motion for summary disposition after discovery closed. The trial court counseled National Union that no matter how strongly it felt about its motion for summary disposition that it should facilitate in discovery. The amended scheduling order dated December 22, 2004, mandated that discovery should be completed by March 31, 2005 and that a hearing on dispositive motions including National Union's motion for summary disposition would occur in the later part of April or the first part of May 2005.

A review of the extensive record in this case reveals 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. *Bass, supra* at 26-27. The record in this matter also reveals that the litigation was, at the very least, contentious. It also shows that in the face of a protracted litigation process with difficult litigants, the trial judge displayed a patient disposition and sincerely attempted to facilitate the discovery process in this matter. The trial court entertained hours upon hours of argument in these matters and refereed dramatics and heated-tempers in the courtroom. Ultimately, when deciding the motions for

default, the trial court carefully scrutinized the record and engaged in a thoughtful analysis before issuing the default judgment. We conclude that the trial court did not abuse its discretion in imposing default judgment as a sanction for National Union's repeated and intentional violations of the court rules and the trial court's orders.

National Union's own proffered justifications for its dilatory conduct indicate that it withheld the requested materials including the claims file because it believed that it was entitled to summary disposition in the matter and because of American Axle and Rodriguez's refusal to execute a proposed protective order. Further, despite a granted motion to compel and repeated direction from the trial court to answer interrogatories and requests for production, the record indicates that National Union either did not respond, continued to provide partial responses that were incomplete and unsatisfactory, or continued to object without providing detailed answers. These actions were not accidental omissions or mistakes. They were flagrant and deliberate as evidenced by the National Union's October 20, 2004 email relating its intent to violate the trial court's order.

Throughout discovery, the trial court attempted to accommodate National Union by repeatedly allowing it more time to answer discovery requests and come into compliance with court orders. The trial court urged National Union, more than once during hearings, to follow court orders and facilitate discovery. Instead, National Union continued to flatly assert, without offering any authority for its position, that it did not have to comply with discovery requests because it was entitled to summary disposition in the matter. Even on appeal, National Union continues to suggest that it was entitled to summary disposition on the merits and therefore it was not required to facilitate discovery "because the discovery sought was neither relevant nor calculated to lead to relevant evidence." However, simply because National Union believed that the matter should be resolved in its favor through a motion for summary disposition does not allow it to refuse to facilitate the discovery process and self-servingly label the opposing parties' discovery requests as vexatious. This is certainly the case when, as here, the trial court has ordered the party to respond to the discovery requests.

Even if National Union believed the trial court's order requiring it to respond to the discovery requests was based on palpable error, National Union still had to obey the order. Parties are not entitled to ignore, or not comply with, an order entered by a trial court simply because they believe it is an incorrect order. In *In re Drudzinski*, 257 Mich App 96, 110; 667 NW2d 68 (2003), this Court held, quoting *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998), that "a party must obey an order entered by a court with proper jurisdiction, even if the order clearly is incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." This Court also held in *In re Drudzinski*, that a party is not entitled to ignore or disobey a court order simply on the belief that the order was invalid and will be overturned on appeal:

Civil disobedience is not the appropriate course of action when a person disagrees with a court order. We are a society of laws and the legal remedy available to appellant was to seek leave to appeal the trial court's order precluding him from wearing his shirt. Appellant elected not to pursue his legal remedy, and instead elected to willfully disobey a valid albeit erroneous court order. A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or that the order will be declared invalid on appeal. Allowing such

behavior would encourage noncompliance with valid court orders on the basis of misguided subjective views that the orders are wrong. There exists no place in our justice system for self-help. [*In re Drudzinski, supra* at 111.]

National Union ignores the fact that the trial court ordered it to respond to discovery requests without further objection and even warned National Union on the record that further noncompliance could result in sanctions.

The record supports the trial court findings that: National Union's failure to respond and to cure deficient responses extended over a substantial period; National Union never complied with the trial court's order granting American Axle's motion to compel discovery despite being given opportunity to supplement answers and an amended scheduling order; a significant amount of time elapsed between the violations and the motions for default judgment especially considering that the trial court warned National Union that noncompliance could result in sanctions; National Union's history of determination to continue to object and refuse to comply with discovery even after repeated trial court orders, warnings, and admonishments demonstrate a deliberate, flagrant, and wanton refusal to facilitate discovery. *Kalamazoo Oil, supra* at 86-87, *Bass, supra* at 26-27. Because the trial court gave careful consideration to the circumstances and requisite factors before concluding that default judgment was appropriate, and because default judgment was wholly justified in the face of National Union's repeated, willful failures to comply with the discovery rules and the court's orders, the trial court did not abuse its discretion in granting default judgment against National Union.

V

Because National Union was not entitled to judgment without delay pursuant to MCR 2.116(I)(1) on its motion pursuant to MCR 2.116(C)(8), the trial court did not abuse its discretion when it delayed deciding National Union's motion for summary disposition until the close of discovery. And, in light of the standard articulated by the *Maldonado* Court, we conclude that the trial court did not abuse its discretion when it entered default judgment as a sanction for National Union's intentional, flagrant, and wanton discovery abuses in this case.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto