STATE OF MICHIGAN

COURT OF APPEALS

PAUL E. WABEKE, Plaintiff-Appellant,	UNPUBLISHED January 11, 2011
v	No. 291679 Allegan Circuit Court
UNCLE BOB'S SELF STORAGE, Defendant-Appellee.	LC No. 08-043730-NO

Before: MURRAY, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

In this slip and fall case, plaintiff appeals as of right the trial court's order that dismissed the case for plaintiff's failure to comply with a discovery order. We affirm.

Even construing plaintiff's in propria persona appellate brief liberally, we find that plaintiff has abandoned each of his ten questions presented on appeal. Plaintiff has merely announced various positions with cursory treatment and with little or no citation of supporting authority, thereby leaving it to this Court to discover and rationalize the basis for his claims. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Plaintiff's failure to properly address the merits of his allegations of error constitutes abandonment of the issues on appeal. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Nevertheless, after a thorough review of the record, we find that reversal is not warranted.

First, plaintiff essentially argues that the trial court erroneously dismissed his case, as set forth in his statement of questions presented I, IV, V, VI, VII, IX, and X. We review a trial court's dismissal of a case for failure to comply with its orders for an abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). An abuse of discretion occurs when a trial court chooses an outcome that is outside the range of reasonable and principled outcomes. *Id.*

MCR 2.313(B)(2) provides for sanctions, including dismissal, in the event a party fails to obey an order to provide or permit discovery. A trial court must "carefully consider the circumstances of the case to determine whether a drastic sanction such as dismissing a claim is appropriate." *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999), overruled in part on other grounds *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618; 752 NW2d 37 (2008). The drastic sanction of dismissal is appropriate only when a party flagrantly

and wantonly fails to comply with discovery orders, and not when the failure can be characterized as "accidental or involuntary." *Id.*

Here, at the December 29, 2008 hearing, and in the resulting order, the trial court informed plaintiff that if he failed to sign a medical release for defendant and to provide complete answers to the interrogatories,[1] it would dismiss his case. Plaintiff thereafter did not provide a medical release to defendant, nor did he provide supplemental answers to the interrogatories. At the January 30, 2009 hearing on defendant's motion to dismiss, plaintiff continued to state his belief that he was not required to provide a medical release to defendant when he had already signed a release for Traveler's Insurance. In addition, plaintiff had made no attempt to provide more complete answers to defendant's interrogatories. He continued to assert that his previous answers to the interrogatories were adequate, and he merely resubmitted those answers to defendant.

The trial court did not abuse its discretion in dismissing the case for plaintiff's refusal to comply with the December 29, 2008 order. Defendant's refusal to comply was flagrant and wanton. In addition, given the history of plaintiff's noncompliance, as well as the opportunities afforded to plaintiff to comply, there is no indication that a lesser sanction would have deterred plaintiff from continuing his discovery abuses. Further, plaintiff's medical information was central to his claims for money damages, and was vitally important to defend against plaintiff's claims. Where defendant's attempt to discover relevant information to a proper defense was frustrated, where plaintiff's noncompliance was not inadvertent, and where the imposition of alternate sanctions would not have deterred plaintiff from continuing his dilatory course of conduct, the trial court's decision to dismiss the case fell within the range of reasonable and principled outcomes. *Maldonado*, 476 Mich at 388.

Second, plaintiff complains that the trial court erroneously denied his request for an adjournment, as reflected in his second question presented on appeal. A trial court's ruling on a motion for an adjournment is reviewed for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). A motion for an adjournment must be based on good cause, and may be granted to promote the interests of justice. MCR 2.503(B)(1), (D)(1); *Soumis*, 218 Mich App at 32.

Plaintiff moved for an adjournment six days before the December 29, 2008 hearing. Plaintiff claimed that on December 19, 2008, he underwent surgery for injuries sustained in the slip and fall, and that because of the surgery and the intervening holidays, he was unable to prepare for the hearing. Plaintiff also planned to take a brief vacation in Florida if the weather and his physical condition permitted.

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[1] Plaintiff provided terse responses to defendant's interrogatories. His response to 32 of the interrogatories was either "totally irrelevant to the case at bar" or "not at all applicable to the case at bar."

While the trial court did not place its basis for denying plaintiff's motion for an adjournment on the record, we conclude that the record demonstrates that plaintiff failed to establish good cause for an adjournment. Notably, plaintiff failed to attend the December 5, 2008 motion hearing on essentially the same subject. While plaintiff appeared at the December 29, 2008 hearing and complained that he did not have time to prepare for the hearing, he nonetheless indicated that he believed that he need not sign a release for defendant and that his interrogatory answers were appropriate. Based on defendant's own statements, it would not have been in the interests of justice to grant an adjournment, where an adjournment would have enabled plaintiff's discovery abuses. Further, plaintiff was not prejudiced by not receiving an adjournment. The trial court afforded him another opportunity to comply with the outstanding discovery issues, but he refused to do so. Under the circumstances, the trial court's denial of plaintiff's motion for an adjournment was within the range of reasonable and principled outcomes. *Maldonado*, 476 Mich at 388.

Third, plaintiff asserts that the trial court failed to provide him with a hearing aid at various motion hearings, as set forth in the third question presented on appeal. The record does not support that plaintiff requested a hearing aid at any of the motion hearings; thus, this assertion of error is subject to the plain-error rule. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 31; 772 NW2d 801 (2009). Because there was no record developed below, we find no basis for reversal. On the record, there is no indication that defendant is a "deaf person," as defined by the Deaf Persons' Interpreters Act, MCL 393.501 *et seq.*, or an individual with a disability under the Americans with Disabilities Act, 42 USC 12101 *et seq*. See MCL 393.502(b); 42 USC 12102(2). In addition, the record does not reveal that plaintiff was negatively affected by the lack of a hearing aid at any of the hearings. Accordingly, plaintiff has failed to establish plain error affecting his substantial rights. *Liparoto Constr, Inc*, 284 Mich App at 31.

Finally, plaintiff's eighth question presented is not a question at all, but merely an excerpt of an exchange between plaintiff and the trial court from the January 30, 2009 hearing. We discern that plaintiff is attempting to take issue with the trial court's failure to address four of five motions that he filed below. Other than vague references in the "Fact #13" and "epilogue" sections of his appellate brief, plaintiff makes no reference to what specific motions the trial court should have decided at the hearing, or why such motions should have been decided when his case was being dismissed. As stated at the outset of this opinion, we will not uncover and rationalize the basis of plaintiff's claims. *Peterson Novelties, Inc*, 259 Mich App at 14.

We note that plaintiff, in the relief section of his appellate brief, asks this Court to disqualify the trial judge,[2] to grant his motion for judgment on the pleadings, to award plaintiff damages for medical costs incurred and for pain and suffering, and to award one-year's free

[2] We note that after filing his claim of appeal, plaintiff moved this Court to disqualify the trial judge. We denied his motion. *Wabeke v Uncle Bob's Self Storage*, unpublished order of the Court of Appeals, entered September 22, 2010 (Docket No. 291679).

rental at defendant's facility. The claims of error that would entitle plaintiff to consideration of the relief requested were not included in his statement of questions presented; thus, they are not properly presented for appellate review. MCR 7.212(C)(5); *Ammex, Inc v Dep't of Treasury*, 273 Mich App 623, 646; 732 NW2d 116 (2007). Moreover, plaintiff failed to develop his arguments or to cite authority related to these claims of error; therefore, we will not consider the claims. *Id.*

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto