

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA SMITH,

Plaintiff-Appellant,

and

WESLEY S. SMITH, JR., a Minor,

Plaintiff,

v

AAMES FUNDING CORPORATION, d/b/a
AAMES HOME LOAN,

Defendant/Third-Party
Plaintiff/Counter-Defendant-
Appellee,

and

TICOR TITLE INSURANCE,

Defendant-Appellee,

and

JULIA TROUPE,

Third-Party Defendant/Counter-
Plaintiff-Appellant.

UNPUBLISHED

August 18, 2011

No. 294723

Wayne Circuit Court

LC No. 07-720744CH

Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

PER CURIAM.

Plaintiff Barbara Smith, proceeding in propria persona, appeals by right from an order dismissing her claims against defendant Aames Funding Corporation after a jury rejected her claim that her signature on a deed was forged. We affirm.

Plaintiff owned a house in Detroit which she transferred to third-party defendant and counter-plaintiff Julia Troupe,¹ who mortgaged it to Capstone Mortgage Corporation. Troupe later transferred the property to herself and Smith. Troupe defaulted on her mortgage and the property was sold at a sheriff's sale. To save the property, plaintiff transferred her interest back to Troupe, who sold the property to Damon Douglas, who mortgaged it to defendant Aames. When Douglas defaulted on his mortgage, Aames acquired the property at a sheriff's sale. Plaintiff claimed that her signature on the deed transferring the property back to Troupe was forged, but the jury found otherwise.

Plaintiff first argues that the trial court erred in granting Aames's motion for partial summary disposition on her claim for damages for wrongful eviction. Although one basis for Aames's motion was that it could not be held liable for evicting plaintiff when Douglas had already evicted her, the trial court granted the motion on the independent ground that Aames evicted plaintiff "based upon a lawful order" as provided by MCL 600.2918(3)(a). Plaintiff does not dispute that Aames obtained an order of eviction from the 36th District Court, and she does not address the trial court's ruling that the statute applied to bar her claim for damages. This Court need not grant relief when an appellant fails to dispute the basis of the trial court's ruling. *Derderian v Genesis Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Although plaintiff asserts that the district court lacked jurisdiction to issue the order of eviction, she does not address the merits of this claim. By failing to present any meaningful argument in support of her claim, plaintiff has abandoned the issue. *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).

Plaintiff also argues that the trial court abused its discretion when it precluded her from calling any witnesses other than herself at trial because she filed her witness list late and never served the list on defendant Aames. Plaintiff contends that the trial court abused its discretion because MCR 2.104(B) provides that the "[f]ailure to file proof of service does not affect the validity of the service." Plaintiff's reliance on MCR 2.104(B) is misplaced. That rule applies to service of process. See *Thomas v Thomas*, 81 Mich App 499, 501-502; 265 NW2d 390 (1978). The service of other papers in an action is governed by MCR 2.107. Subrule (D) of that rule, which governs proof of service, does not contain a similar provision.

A court may issue a scheduling order setting "times for events the court deems appropriate," including the "exchange of witness lists[.]" MCR 2.401(B)(2)(a)(iv). The witness list, which must be filed and served within the time set by the court under subrule (B)(2)(a), must include the name and address, if known, of each witness, identify whether the witness is an expert and, if so, identify his field of expertise. MCR 2.401(I)(1). The purpose of the witness list is to avoid trial by surprise. *Grubor Enterprises, Inc v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993). "The court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown." MCR 2.401(I)(2). As a corollary to this rule, the court may impose sanctions against a party who files a witness list but

¹ Julia Troupe is plaintiff's daughter and has joined in plaintiff's appeal without raising any issues relating to the claims brought by or against her.

does not file it in a timely manner. *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990). “These sanctions may preclude the party from calling witnesses.” *Duray Dev, LLC v Perrin*, 288 Mich App 143, 164; 792 NW2d 749 (2010). A court should consider all appropriate factors, including those set forth in *Dean*, 182 Mich App at 32-33, to determine what sanction is just and proper in the context of the case before it.

Here, plaintiff has not addressed the propriety of the trial court’s ruling in light of applicable law. Accordingly, this issue may be deemed abandoned. *Coble v Green*, 271 Mich App 382, 391; 722 NW2d 898 (2006). We note, however, that at the initial motion hearing, the trial court considered most of the *Dean* factors, although not separately and specifically. The court seemed prepared to excuse the late filing of plaintiff’s witness list but for the fact that plaintiff could not show that she had ever served Aames with her witness list. That precluded Aames from conducting discovery regarding the substance of the listed witnesses’ proposed testimony and from preparing its case accordingly. Plaintiff never served Aames with a witness list, and Aames only obtained actual notice of plaintiff’s intended witnesses a week before trial when defense counsel examined the court file. The record does not demonstrate that the trial court erred in its analysis of the relevant factors or show that the facts and circumstances of the case warranted a lesser sanction. The trial court did not abuse its discretion. *Dean*, 182 Mich App at 32.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Elizabeth L. Gleicher