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STATE OF MICHIGAN

COURT OF APPEALS

AURO REHAB SERVICES LLC,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY and HOME-OWNERS INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
November 09, 2026
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No. 376907
Wayne Circuit Court
LC No. 24-005529-NF

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

Plaintiff, Auro Rehab Services LLC, appeals by right the trial court's order granting a motion by defendant, Home-Owners Insurance Company,[1] to dismiss this action for failure to permit discovery. Plaintiff contends that the trial court abused its discretion by dismissing the action with prejudice because, among other grounds, the trial court failed to provide adequate reasoning for its decision and failed to consider available lesser sanctions. We agree. Accordingly, we vacate the trial court's order and remand for further proceedings consistent with this opinion.

I. BACKGROUND AND FACTS

In April 2024, plaintiff filed a complaint asserting claims under the no-fault act, MCL 500.3101 *et seq*. Plaintiff alleged that it was owed reimbursement for ongoing services it was providing to Leonard Johnson and Darlene Hannah ("claimants") in treatment of their injuries from a motor-vehicle accident.

[1] In the proceedings below, the parties stipulated to dismissal, without prejudice, of plaintiff's claims against a second defendant, Auto-Owners Insurance Company. No order was ever entered to effectuate the dismissal, however, so on appeal we deem both defendants to be appellees. In this opinion, our use of the term "defendant" refers solely to Home-Owners.

In April 2025, defendant moved to dismiss for failure to permit discovery. Defendant's motion asserted that plaintiff never provided defendant with claimants' complete medical records and bills, and that plaintiff failed to respond to defendant's requests to reschedule the depositions of two treatment providers. Plaintiff did not file a response to defendant's motion to dismiss, nor did plaintiff's counsel appear at the hearing on the motion. Following that hearing, the trial court granted defendant's motion and dismissed plaintiff's complaint with prejudice. Plaintiff filed a motion for reconsideration, which the trial court denied.

Plaintiff now appeals.

II. STANDARD OF REVIEW

This Court reviews for an abuse of discretion a trial court's decision to dismiss an action as a sanction. *Gueye v State Farm Mut Auto Ins Co*, 343 Mich App 473, 487; 997 NW2d 307 (2022). An abuse of discretion occurs when the trial court "chooses an outcome outside the range of principled outcomes." *Id*.

III. ANALYSIS

Plaintiff contends that the trial court abused its discretion by dismissing the action. We agree.

Our Supreme Court has explained that trial courts have "the inherent authority to sanction litigants and their counsel, including the power to dismiss an action." *Maldonado v Ford Motor Co*, 476 Mich 372, 389; 719 NW2d 809 (2006). This authority "is rooted in a court's fundamental interest in protecting its own integrity and that of the judicial process." *Id*. (quotation marks and citation omitted). The Michigan Court Rules also authorize dismissal in some enumerated circumstances. For example, MCR 2.313(B)(2)(c) allows a trial court to enter an order "dismissing [an] action or proceeding or a part of it" when a party "fails to obey an order to provide or permit discovery[.]" Similarly, MCR 2.504(B)(1) provides that when "a party fails to comply with these rules or a court order, upon motion by an opposing party, or sua sponte, [a trial] court may enter a default against the noncomplying party or a dismissal of the noncomplying party's action or claims."

Dismissal, however, "is a drastic step that should be taken cautiously." *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995). "Our legal system favors disposition of litigation on the merits." *Id.* at 507. Before dismissing an action, a trial court therefore must "evaluate other available options on the record" and "conclude that the sanction of dismissal is just and proper." *Id.* at 506-507. Thus, "because default is a severe sanction, it is imperative that [a] trial court balance the factors" delineated by this Court as pertinent considerations "and explain its reasons for imposing such a grave sanction in order to allow for meaningful appellate review." *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 88; 618 NW2d 66 (2000). Those relevant factors are:

> (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a

> lesser sanction would better serve the interests of justice. [*Vicencio*, 211 Mich App at 507.]

In the present case, defendant argued in support of its motion to dismiss, at which point the trial court stated: "I've read your motion. There is no [r]esponse. I'm gonna go ahead and grant it. Please e-file the [o]rder and I'll sign it. Thank you." The trial court then entered an order stating that defendant's motion was granted "for the reasons stated on the record" and dismissing plaintiff's complaint with prejudice. The trial court's reasoning for denying plaintiff's motion for reconsideration was limited to a statement that plaintiff's motion "present[ed] nothing that the court did not previously consider" in ruling on defendant's motion to dismiss and that plaintiff had failed to identify any palpable error.

On this record, we conclude that the trial court's dismissal of the case was an abuse of discretion. In dismissing the action, the trial court did not engage with the relevant factors, did not consider any other available options on the record, and did not explain why it deemed dismissal the just and proper sanction in this case. See *Vicencio*, 211 Mich App at 506-507; *Kalamazoo Oil Co*, 242 Mich App at 88. Without any such reasoning, we are unable to conduct a meaningful review of the trial court's decision on appeal. See *Kalamazoo Oil Co*, 242 Mich App at 88.

When a trial court fails to conduct the required on-the-record analysis, the proper course is to vacate and remand for the trial court to consider the relevant factors and other available options. See *Gueye*, 343 Mich App at 494-495. We do so here. On remand, should the trial court conclude that dismissal is just and proper, the trial court must explain its rationale, including its consideration of other available options, so as to facilitate meaningful appellate review. See *Kalamazoo Oil Co*, 242 Mich App at 88; *Vicencio*, 211 Mich App at 506.

In concluding that a remand is required, we do not decide that sanctions were unwarranted. The record appears to support defendant's allegations that plaintiff violated the court rules by failing to timely disclose and produce relevant records, to otherwise respond to discovery requests, and to supplement its responses. See generally MCR 2.301 *et seq*. Defendants made repeated requests for records and to schedule depositions, and plaintiff either failed to respond or provided responses that were deficient. Further, plaintiff did not respond to defendant's motion to dismiss and did not appear at the hearing on that motion.

That being said, defendant does not identify any court orders that plaintiff directly violated, plaintiff did produce some records and witnesses for deposition, and plaintiff agreed that it would provide additional records and allow witnesses to be redeposed. See *Vicencio*, 211 Mich App at 507. The required sanction for failing to respond to a motion or appear for a hearing on a motion is costs, not dismissal. MCR 2.119(E)(4). And, as discussed, the record does not establish that the trial court considered whether a sanction less drastic than dismissal with prejudice would serve the interests of justice. *Vicencio*, 211 Mich App at 507. We leave it to the trial court to consider these factors on remand.

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

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin