

STATE OF MICHIGAN
COURT OF APPEALS

JESSIE MACK, SR., and MARY LYNN SMITH
MACK,

UNPUBLISHED
September 18, 2007

Plaintiffs-Appellants,

v

BENEFIT MORTGAGE CORPORATION,

No. 271913
Oakland Circuit Court
LC No. 2006-073052-CP

Defendant-Appellee.

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal from the trial court's order of dismissal pursuant to MCR 2.223(B)(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision to dismiss for an abuse of discretion. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995). Statutory interpretation is a question of law that we review de novo on appeal. *Brown v Mayor of Detroit*, 478 Mich 589, 593; 734 NW2d 514 (2007).

The Wayne Circuit Court granted defendant's motion for a change of venue, and ordered plaintiffs to pay defendant's costs and expenses of \$520 for having to bring the motion, and a \$150 transfer fee. MCR 2.223(B)(1). The court entered this order on January 25, 2006.

MCR 2.223(B)(2) provides:

(2) After transfer, no further proceedings may be had in the action until the costs and expenses allowed under this rule have been paid. If they are not paid within 56 days from the date of the order changing venue, the action must be dismissed by the court to which it was transferred.

When the language of a court rule is clear and unambiguous, the plainly expressed meaning must be enforced. *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). "Our Supreme Court's use of the word 'must' indicates that the award of costs is mandatory, not discretionary." *Great Lakes Gas Transmission Ltd P'ship v Markel*, 226 Mich App 127, 130; 573 NW2d 61 (1997). Here, the trial court correctly reasoned that MCR 2.223(B)(2) was not ambiguous, and made dismissal of the case mandatory, not discretionary.

Pursuant to MCR 2.223(B)(2), plaintiffs had until March 22, 2006, to pay costs and the transfer fee. The Oakland Circuit Court extended the deadline, and ordered the \$150 transfer fee to be paid by March 24, 2006, or the case would be dismissed. On March 17, 2006, plaintiffs paid the transfer fee. Plaintiffs failed to pay the \$520 costs and expenses, notwithstanding having received two letters from defendant's counsel requesting payment. Plaintiffs' failure to pay the \$520 was a conscious choice, not an oversight. The trial court accordingly dismissed the case with prejudice.

Plaintiffs argue that the trial court should have dismissed their case without prejudice, and that the trial court abused its discretion by dismissing with prejudice.

The decision to dismiss a matter with or without prejudice is within the sound discretion of the trial court, *North v Dep't of Mental Health*, 427 Mich 659, 661; 397 NW2d 793 (1986), and the decision will not be reversed absent an abuse of discretion. An "abuse of discretion" occurs when the decision falls outside the principled range of outcomes. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

At the hearing on the motion to dismiss, plaintiffs' sole argument was that the motion should be denied because the language of MCR 2.223(B)(2) is discretionary. Plaintiffs did not argue that the trial court should impose the lesser sanction of dismissal without prejudice, and did not provide the trial court with any reasons why dismissal without prejudice was more appropriate than dismissal with prejudice. The trial court observed that plaintiffs failed to offer reasons for their failure to pay the costs as ordered. Plaintiffs first addressed dismissal with or without prejudice in their motion for reconsideration. The trial court ruled that plaintiffs merely presented, expressly and by reasonable implication, the same issues as previously addressed. The trial court also relied on plaintiffs' failure to file a written response to the underlying motion as required by MCR 2.119.

Based on the undisputed facts, the result was not outside the range of principled range of outcomes. Therefore, the trial court did not abuse its discretion by dismissing this case with prejudice.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder