

STATE OF MICHIGAN  
COURT OF APPEALS

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TRISHA J. ARNDT, P.C.,

Plaintiff/Counter-Defendant-  
Appellee,

v

HENRY MELVIN HORNE, JR.,

Defendant/Counter-Plaintiff-  
Appellant.

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UNPUBLISHED

July 25, 2006

No. 260881

Wayne Circuit Court

LC No. 04-423234-CZ

Before: Neff, P.J., Bandstra and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiff's motion for entry of requests to admit, dismissing defendant's counter-complaint, and entering judgment in favor of plaintiff in this contracts case. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is whether the trial court erred by ordering plaintiff's requests to admit be deemed admitted and deciding the case on the basis of those admissions. Construing and applying a court rule presents a legal issue subject to de novo review. *Wickings v Artic Enterprises, Inc.*, 244 Mich App 125, 133; 624 NW2d 1987 (2000). A trial court's decision regarding discovery is reviewed for an abuse of discretion. *VanVourous v Burmeister*, 262 Mich App 467, 476; 687 NW2d 132 (2004). An abuse of discretion occurs only where a court's action is so violative of fact and logic as to constitute perversity of will or defiance of judgment. *Messenger v Ingham County Prosecutor*, 232 Mich App 633, 647; 591 NW2d 393 (1998).

Under MCR 2.312(B)(1), a party has 28 days after service of a request for admissions to provide written answers or objections to the party requesting the admissions. If the party to whom the request is directed fails to timely answer the request for admissions, "[e]ach matter as to which a request is made is deemed admitted . . . ." MCR 2.312(B)(1). "A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission." MCR 2.312(D)(1). Admissions under MCR 2.312 are "judicial" admissions that "are not really 'evidence' at all." *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420-421; 551 NW2d 698 (1996). The import of the judicial admission is that it is conclusively established in the case and is not subject to contradiction or explanation. *Radtke, supra* at 421.

In this case, defendant did not timely respond to the requests for admission and did not file a motion to withdraw the admissions. Therefore, the trial court correctly ordered that plaintiff's requests for admissions be deemed admitted. Because the substance of the admissions completely decided the case, we conclude that the trial court did not err in dismissing defendant's counter-complaint and entering judgment in favor of plaintiff on the basis of the admissions.

Defendant argues that, in the spirit of the discovery rules, the trial court erred in granting a final order without giving defendant a chance to cure the discovery defect or requiring plaintiff to file a motion to compel compliance. MCR 2.312(B)(1) is, however, clear on this issue. If the party to whom the request is directed fails to timely answer the request for admissions, "[e]ach matter as to which a request is made is deemed admitted . . ." MCR 2.312(B)(1). There is no requirement in MCR 2.312, or any other court rule, or case law that plaintiff first file a motion to compel compliance with the request to admit. Defendant also failed to move for withdrawal or amendment of the admissions. The language of the rule is clear and we conclude that the trial court correctly ordered that plaintiff's requests for admissions be deemed admitted.

Defendant also argues that, under the circumstance of this case, a default judgment is inappropriate as a sanction for failure to provide discovery. This argument is irrelevant because the trial court did not grant a default judgment as a sanction for failure to provide discovery. Because the trial court granted judgment to plaintiff on the basis of the admissions, and not as a sanction, we conclude that the trial court did not err in rendering judgment for plaintiff.

Affirmed.

/s/ Janet T. Neff  
/s/ Richard A. Bandstra  
/s/ Brian K. Zahra