

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff-Appellant,

v

REXAIR, INC.,

Defendant-Appellee.

UNPUBLISHED
May 8, 2008

No. 272652
Ingham Circuit Court
LC No. 89-064557-CE

Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Plaintiff and defendant entered into a consent judgment in 1991. In 2004, plaintiff filed a post-judgment motion for dispute resolution with the trial court to enforce provisions of the consent judgment and seeking to require defendant to perform additional remediation of groundwater contamination. Plaintiff later filed a notice to withdraw the motion, but the trial court required plaintiff to seek dismissal in accordance with MCR 2.504. Pursuant to the court's directive, plaintiff brought a motion to withdraw its request for dispute resolution. The trial court granted plaintiff's motion but imposed as conditions that the dismissal would be with prejudice and that defendant would receive an award of attorney fees and costs. Plaintiff argued that it must be afforded the option to withdraw its motion for dismissal and proceed with the litigation if it did not concur with the terms and conditions for dismissal imposed by the trial court. The trial court entered an order memorializing its ruling. Plaintiff then brought a motion for relief from the court's order, which the court denied citing its "inherent powers." Plaintiff appeals that order of the court. We vacate and remand to the trial court for further proceedings.

The lower court adopted certain findings of fact and conclusions of law, as prepared by defendant, as part of its order. Plaintiff argues that the adoption of those findings constituted clear error. We agree.

The trial court's ruling contained findings of fact that were adopted in whole as prepared by defendant and submitted to the court. As a result, the trial court found that plaintiff had engaged in misconduct as identified in the findings of fact by (a) repeated attempts to delay or bypass the dispute resolution process required by the consent judgment, (b) the improper use of the dispute resolution process to impose plaintiff's position on defendant and the lower court, and (c) consistently ignoring the trial court's ruling pertaining to the application of the consent judgment. This Court is certainly aware of the existence of case law detailing a trial court's

inherent power to control the proceedings before it and to impose sanctions on parties and counsel for egregious behavior. *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006). However, neither the history of this litigation nor the lower court record provides support for the trial court's determination that plaintiff's actions constituted misconduct.

We observe that a lengthy time period had expired from plaintiff's initial filing of a post-judgment motion asserting defendant's liability for further contamination and the need for additional remediation. Plaintiff initially sought to proceed under federal law to obtain relief outside the dispute resolution provision of the consent judgment, which the trial court rejected in 2001. However, the trial court did not indicate that plaintiff's action in pursuing this alternative constituted misconduct. In 2003, plaintiff filed a motion for dispute resolution, which defendant asserted was defective in form. Defendant did not object to plaintiff's withdrawal of that motion and the parties engaged in continuing negotiations in an attempt to reach a settlement. Plaintiff filed an amended motion in 2004, however the parties stipulated to a stay of proceedings to permit further negotiations. The record demonstrates that the delays incurred benefited both parties and were intended to obtain resolution of a very complicated dispute to determine responsibility for a newly discovered plume of contamination, without the necessity of detailed hearings. The trial court's finding that plaintiff had previously ignored the court's rulings was based on an overly-broad interpretation of the trial court's earlier decisions, and was not supported by the evidence in the record. As a result, the trial court's adopted factual findings were clearly erroneous and fail to support the award of attorney fees and costs as a sanction for plaintiff's misconduct.

Plaintiff also contends that the lower court erred in requiring it to bring a motion to dismiss pursuant to MCR 2.504, rather than allowing plaintiff to simply withdraw its post-judgment motion. We agree. The lower court indicated its decision to require plaintiff to move for dismissal under MCR 2.504 was premised on both the court rules and its authority under a provision of the consent judgment.

MCR 2.504(A)(2) states that "an action may not be dismissed at the plaintiff's request except by order of the court on terms and conditions the court deems proper." An action, under the court rules, "is commenced by filing a complaint with a court." MCR 2.101. A motion, on the other hand, is a request for an order from the court. MCR 2.119(A)(1). Plaintiff initially filed a post-judgment motion seeking dispute resolution in the lower court. Plaintiff sought to withdraw its motion for dispute resolution; it did not seek to dismiss the case. Consequently, the lower court erred in requiring plaintiff to seek dismissal of its motion under MCR 2.504.

The trial court also premised its decision on its authority under the consent judgment, which states that the court may "take any action necessary or appropriate for construction or implementation of this Consent Judgment." Regardless of the authority bestowed by the consent judgment, the trial court was not free to ignore or disregard the court rules governing procedure. MCR 2.001. Hence, requiring plaintiff to withdraw his motion pursuant to an inapplicable court rule constituted error. In addition, we note that the parties have agreed, through their approval of the consent judgment, to resolve, "dispute[s] over . . . additional work" through petition to the trial court. Therefore, the parties' agreement to restrict themselves to this method for dispute

resolution, when pursued legitimately or in good faith, may be construed merely as an inherent cost of conducting business to which the parties have voluntarily subjected themselves.

We vacate the trial court's order and remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Stephen L. Borrello