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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 26, 2017

To:

Hon. Robert J. Wirtz
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Arthur E. Kurtz
Kevin David Trost
Axley Brynelson, LLP
P.O. Box 1767
Madison, WI 53701-1767

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Katelyn P. Sandfort
Nash, Spindler, Grimstad & McCracken, LLP
1425 Memorial Drive
Manitowoc, WI 54220

Kirk William Everson
Everson, Richards LLP
P.O. Box 16
Van Dyne, WI 54979-016

Martina M. Balderas
61 N. Marr Street
Fond du Lac, WI 54936

You are hereby notified that the Court has entered the following opinion and order:

2016AP1094

Martina M. Balderas v. Mumm Real Estate, LLC
(L.C. # 2015CV552)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Martina Balderas appeals pro se¹ from a circuit court order dismissing her complaint against Mumm Real Estate, LLC and individuals associated with Mumm (hereafter Mumm) and their insurer, Auto Owners Insurance Company, as a sanction for her failure to comply with

court orders requiring her to respond to discovery. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).²

In a complaint filed on November 12, 2015, Balderas and her minor children alleged that property Balderas rented from Mumm became uninhabitable due to environmental conditions. Mumm answered the complaint and on December 16 served interrogatories and requests for admission and for documents upon Balderas. Mumm agreed to extend the time for Balderas to respond to the discovery to February 9, 2016. On February 5, Balderas moved the circuit court to extend the time for her to respond to Mumm's discovery because her counsel had not been able to communicate with her. The circuit court's February 29 order memorialized a February 19 hearing on Balderas's extension request. The court ordered Balderas to respond to the discovery no later than March 21.³ On March 25, Mumm moved to dismiss Balderas's complaint because she had not complied with the court's March 21 discovery deadline.

At an April 15 hearing at which Balderas did not personally appear, Balderas's counsel referred to the February 19 hearing and represented that Balderas had informed the court "no doubt, she said that she would be able to complete [the outstanding discovery]" and get it to counsel's office in time for the March 21 response deadline. Counsel reported that Balderas recently told him that she had the will but not the means to complete the discovery. Counsel

¹ Balderas was represented by counsel in the circuit court.

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

³ The record before this court does not include a transcript of the February 19, 2016 hearing from which this order emanated.

mentioned Balderas's personal circumstances (allegations of domestic violence and having to move to a shelter to escape the violence). Counsel suggested taking Balderas's deposition rather than dismissing her claims.

The circuit court found that the discovery was outstanding, Balderas had not complied with either the discovery requests or the court-ordered deadline, there was no evidence that Balderas's impediments were insurmountable, and the defendants had a right to receive responses to their discovery. The court dismissed Balderas's claims with prejudice "for her willful and repetitive failure to comply with discovery." Balderas appeals.

On appeal, Balderas argues the specifics of the personal circumstances that interfered with her ability to respond to discovery. However, these assertions are not supported by citations to the record, and the record before this court does not contain any evidence substantiating that the circuit court was provided with this evidence.⁴

The circuit court had discretion to dismiss Balderas's claims as a sanction for her failure to comply with the discovery statutes and a court order. *See Lister v. Sure Dry Basement Sys. Inc.*, 2008 WI App 124, ¶10, 313 Wis. 2d 151, 758 N.W.2d 126. We will uphold a discretionary decision if the circuit court examined the relevant facts, applied the proper legal standard and reached a reasonable conclusion. *Id.* Dismissal is an appropriate consequence for egregious

⁴ We do not consider materials in Balderas's appendix that we also do not find in the circuit court record. *Roy v. St. Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256. To the extent Balderas includes in her appendix letters from her counsel to the circuit court, it was Balderas's responsibility to make sure that these materials were included in the record transmitted to the clerk of this court. *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993).

conduct, which includes a failure to comply with discovery orders “without clear and justifiable excuse.” *Id.*, ¶11 (citation omitted).

We conclude that the circuit court properly exercised its discretion when it dismissed Balderas’s claims as a sanction for her failure to respond to discovery requests. The court’s finding that Balderas did not comply with discovery orders is supported in the record as is the court’s finding that Balderas willfully failed to comply with the order, essentially a determination that Balderas lacked a clear and justifiable excuse for her failure to comply. The record contains no evidence supporting a claim that Balderas’s inability to comply with the court’s discovery order arose from certain specific personal circumstances.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals