



lack of desire to try the case, removed the case from its trial calendar. The defendant then filed a motion to dismiss the plaintiff's action pursuant to Supreme Court Rule 219(c) (eff. July 1, 2002), or in the alternative to extend all pretrial dates and deadlines by 120 days. The trial court granted the defendant's motion and dismissed the plaintiff's action with prejudice pursuant to Supreme Court Rule 219(c)(v) (eff. July 1, 2002), finding that the plaintiff failed to use reasonable efforts to prosecute the case and failed to comply with its orders regarding witness disclosures and trial preparation. On appeal, the plaintiff contends that the trial court abused its discretion in dismissing the action with prejudice. We reverse and remand.

¶ 3 The procedural facts are not in dispute. The present action was filed in the circuit court of Saline County on October 29, 2007. Pursuant to the defendant's change of venue motion, the case was transferred to the circuit court of Jackson County in September 2008. During the pretrial discovery period, the plaintiff filed multiple motions seeking extensions of time to comply with discovery requests and to disclose opinion witnesses and a motion to continue the trial date, and the defendant filed two motions to continue the trial date. The trial court granted all of these motions. Because of the continuances and extensions, the trial court issued amended pretrial orders containing amended deadlines for the disclosure of opinion witnesses and amended dates for the final pretrial conference and the trial. The record shows that the trial court issued four different pretrial orders between July 2009 and February 2010.

¶ 4 On June 11, 2010, the plaintiff filed her first and only motion to continue the trial date. In a docket entry made that same day, the trial court, wrote:  
"Yet again, there is a Motion to Continue the trial of this case. The Court doubts the desire of either party to try this case. Consequently, rather than continually setting

and resetting the case, the Court will place the case off the docket until the parties are truly ready to try the case. The pre-trial date of 8/17/2010 and the trial date of 9/7/2010 are both continued generally."

In addition to this docket entry, the court also issued a typewritten order which was signed on June 16, 2010, and file-marked on June 18, 2010. In that order, the trial court found that the plaintiff's motion for a continuance was "well-founded and should be granted."

¶ 5 On June 17, 2010, the defendant filed a motion to dismiss the plaintiff's action pursuant to Supreme Court Rule 219(c) or, in the alternative, to extend all pretrial dates by 120 days. On October 7, 2010, the trial court entered an order dismissing the plaintiff's action with prejudice pursuant to Supreme Court Rule 219(c)(v), finding that the plaintiff failed to use reasonable efforts to prosecute her case and failed to comply with its orders regarding the disclosure of opinion witnesses. The plaintiff filed a motion to reconsider, which was denied. This appeal followed.

¶ 6 The sole question on appeal is whether the trial court abused its discretion when it entered an order dismissing the plaintiff's action with prejudice as a sanction under Supreme Court Rule 219(c)(v).

¶ 7 Supreme Court Rule 219(c) provides that where a party unreasonably fails to comply with the rules of discovery and pretrial procedures, a discovery order, or any order entered under the supreme court rules, the court may enter, in addition to remedies elsewhere specifically provided, such orders as are just, and it then provides a nonexhaustive list of available sanctions, including the dismissal of an action. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Under subparagraph (v), the trial court has the discretion to dismiss an action with or without prejudice if a party refuses to comply with its orders or the supreme court rules related to discovery and pretrial procedures. Ill. S. Ct. R. 219(c)(v) (eff. July 1, 2002).

¶ 8

The purpose of imposing sanctions pursuant to Rule 219(c) is to coerce compliance with court rules and orders, and not to punish a dilatory party. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 123, 692 N.E.2d 286, 291 (1998); *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 68, 651 N.E.2d 1071, 1081 (1995). A just sanction under Rule 219(c) is one which, to the degree possible, insures discovery and a trial on the merits. *Shimanovsky*, 181 Ill. 2d at 123, 692 N.E.2d at 291. The dismissal of a cause of action is a drastic sanction that should be employed as a last resort and only in those cases where the offending party's actions show a deliberate, contumacious, or unwarranted disregard of the court's authority, and when all the court's other enforcement powers have failed to advance the litigation. *Shimanovsky*, 181 Ill. 2d at 123, 692 N.E.2d at 291; *Sander*, 166 Ill. 2d at 67-68, 651 N.E.2d at 1081. The imposition of Rule 219(c) sanctions is largely a matter within the discretion of the trial court and will not be disturbed on review unless the sanctions constitute an abuse of discretion. *Shimanovsky*, 181 Ill. 2d at 123, 692 N.E.2d at 291. An abuse of discretion occurs where no reasonable person would adopt the trial court's view, such as where the sanctioned party's conduct was not unreasonable or where the sanction is not just. See *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1099-1100, 947 N.E.2d 333, 341 (2011) (the trial court abused its discretion in dismissing with prejudice ex-husband's petition to modify custody as a sanction for his failure to comply with a discovery order, without attempting to coerce compliance by employing any lesser sanction, other than a continuance of the trial date); *Walton v. Throgmorton*, 273 Ill. App. 3d 353, 359-60, 652 N.E.2d 803, 807 (1995) (the court's dismissal of a petition with prejudice was found to be a sanction disproportionate to the circumstances of the case and an abuse of discretion).

¶ 9

After reviewing the record, we conclude that the dismissal of the plaintiff's

action with prejudice was an unjust sanction. We recognize, even on a cold record, that the trial court became frustrated with the repeated requests for extensions of the discovery deadlines and continuances of the trial date, and the overall lack of forward progress in discovery. But the record shows that not all of the delays were attributable to the plaintiff and that the trial court continued to allow the requests for extensions and continuances without ever putting the parties on notice that additional delays in discovery would subject them to sanctions, including a dismissal of the offending party's pleadings. The record shows that prior to the sanction of dismissal, the only sanction imposed was an order removing the case from the trial schedule indefinitely, and this sanction was intended to motivate both parties to prepare for trial. Then, without employing any additional enforcement mechanisms or less drastic sanctions to coerce the plaintiff's compliance with the deadlines for the disclosure of opinion witnesses, the court imposed the harshest sanction available under Rule 219(c). In this case, the trial court abused its discretion in dismissing the plaintiff's action with prejudice without first attempting to coerce the plaintiff's compliance with its pretrial disclosure orders by means of a less drastic sanction.

¶ 10           Accordingly, the decision of the circuit court to dismiss the plaintiff's action with prejudice is reversed and the cause is remanded.

¶ 11           Reversed and remanded.