IN THE COURT OF APPEALS OF IOWA

No. 7-103 / 96-0925

000205

AMIT KAPOOR,

Appellant,

vs.

JEFFREY HITT and DAVID HITT,

Appellees.

FILED
MAY 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Plaintiff appeals from the district court's dismissal of his action as a discovery sanction and its imposition of $5,631.60 in monetary sanctions. **AFFIRMED.**

Amit Kapoor, Des Moines, pro se.

Mark J. Wiedenfeld and Joseph P. McLaughlin of the Wiedenfeld Law Office, Des Moines, for appellee.

Considered by Habhab, C.J., and Streit, J., and Hayden, S.J.*

*** Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.**

PER CURIAM.

On July 21, 1995, a vehicle owned by Anju Jain and driven by Amit Kapoor collided with a vehicle owned by David Hitt and driven by Jeffrey Hitt. Out of the litigation which followed arose discovery problems that eventually prompted the trial court, in two separate orders, to dismiss the action and impose monetary sanctions against Plaintiffs Anju Jain and Amit Kapoor. Plaintiff Amit Kapoor appeals from those orders.

In their Petition, Plaintiffs claimed damages for property damage and personal injury. Defendants served their initial discovery on August 22, 1995. The next day, Plaintiffs served their discovery. After several motions to compel and for extension of deadlines, the trial court set all outstanding motions for hearing. On December 21, 1995, the trial court ordered Plaintiffs to respond to all outstanding discovery by December 26.

Plaintiffs met the deadline, but Defendants believed many of the answers to interrogatories were incomplete and noticed Plaintiffs had not provided many of the documents previously requested. Defendants filed a motion to compel, which was set for hearing. At the hearing, Plaintiff Amit Kapoor indicated he was no longer pursuing a claim for personal injuries and would only be asserting a claim for property damage.

Citing specific examples, the court ruled on April 11 that Plaintiffs' responses to discovery were incomplete and amounted to a violation of the December 21 order,

especially in light of Plaintiffs' failure to amend their pleadings or to otherwise notify Defendants of the limitation of their claims to property damage only. As a sanction, the court ordered Plaintiffs to pay Defendants $1,935 in reasonable costs of the attorneys' time spent attempting to obtain responses to the discovery requests. The court ordered the sanction paid by May 15, 1996, and failure to do so would be grounds to dismiss their action.

On April 15, 1996, Plaintiff Anju Jain filed a notice of dismissal without prejudice. Although the dismissal contained a certification of service, Defendants never received the dismissal and continued to prepare for trial. Even after Defendants served Plaintiffs with several pretrial filings, Plaintiffs did not alert them to the dismissal. Upon learning of the dismissal, Defendants considered the case fully dismissed--Plaintiff Anju Jain had dismissed her claim and Defendants believed Plaintiff Amit Kapoor could not pursue a claim for damage to property he did not own. Thus, Defendants spent time and their clients' resources preparing to defend a case they now believed did not exist.

Plaintiffs did not pay the sanction by the date set by the court. Defendants moved for sanctions, requesting the court dismiss Plaintiff Kapoor's action and award them additional attorney fees. On May 17, following a hearing, the court dismissed Plaintiff Kapoor's case for failure to comply with the two previous orders (April 11 and December 21). On June 12, the court ordered Plaintiffs to pay additional

monetary sanctions to Defendants of $3,696.60. From these two orders Plaintiff Amit Kapoor appeals.[1]

Appellant has appeared pro se throughout these proceedings. He lists thirty-four "issues" in his brief he maintains are presented for review. These are not issues in the sense of typical appellate practice, but represent statements of purported facts or legal propositions appellant uses to build an extended syllogism. Each issue is a building block to appellant's ultimate contention the trial court erred by dismissing his action and by imposing monetary sanctions.

We review discovery sanctions for an abuse of discretion. *Kendall/Hunt Publishing Co. v. Rowe*, 424 N.W.2d 235, 240 (Iowa 1988). We will find an abuse of discretion when the ruling rests on clearly untenable or unreasonable grounds. *Squealer Feeds v. Pickering*, 530 N.W.2d 678, 681 (Iowa 1995). An abuse of discretion also occurs when substantial evidence does not support the trial court's ruling. *Pierce v. Nelson*, 509 N.W.2d 471, 473 (Iowa 1993).

Because the trial court ordered dismissal as the sanction in this case, we recognize the breadth of that discretion narrows. *Wagner v. Miller*, 555 N.W.2d 246, 249 (Iowa App. 1996). To impose this sanction, the trial court had to find Plaintiff refused to comply out of willfullness, fault, or bad faith. *Rowe*, 424 N.W.2d at 240.

---

[1] Only Amit Kapoor appealed these orders. Therefore, for the remainder of this opinion, references to "appellant" in the singular tense refer to Amit Kapoor.

Usually dismissal is limited to situations in which a party has violated an order of the trial court. *Id.*

The record reflects that appellants caused significant delays and confusion in what otherwise should have been a routine tort action. More than three months passed before Defendants received any responses to their discovery requests, and those responses came only after the trial court ordered Plaintiffs to comply. Much to Defendants' disappointment, many of the responses to interrogatories were incomplete and much documentary evidence was not provided as requested. The Defendants were forced to file another motion to compel.

The trial court found that Plaintiffs' responses were incomplete. Moreover, the court found Defendants suffered unfair surprise when Plaintiff revealed at the hearing his claim was limited to property damage only. Plaintiff's conduct in stalling discovery while withholding the true nature of his claim caused Defendants to expend needless time and resources. The court imposed a monetary sanction and informed Plaintiff that failure to pay the sanction by the required date would be grounds for dismissal of his action.

The date for the payment of the sanction came and went. In the interim, Defendants discovered Anju Jain had voluntarily dismissed her case. Defendants had not been notified even after their pretrial submissions should have alerted Plaintiff to their lack of knowledge of the dismissal. At this point, this action ceased to exist; no party with standing remained to prosecute a legitimate claim.

Defendants then moved for dismissal and for additional attorney fees. The trial court, after another hearing, found Plaintiffs had intentionally violated two prior court orders and caused Defendants to endure needless expense. Plaintiffs had violated the order to provide discovery and the order to pay the monetary sanctions by the due date. The court ordered dismissal of Plaintiff's case with prejudice and imposed additional monetary sanctions on Plaintiffs.

We determine the trial court did not abuse its narrowed discretion in dismissing Plaintiff's action. Violating the trial court's discovery orders and failing to reveal the true nature of his claim is the same type of conduct we found objectionable in *Wagner v. Miller*, 555 N.W.2d 247 (Iowa App. 1996). The conduct in this case falls within the range of conduct that has caused dismissals in other cases to be affirmed. *See Suckow v. Boone State Bank & Trust, Co.*, 314 N.W.2d 421, 426 (Iowa 1982) (digesting cases in which sanctions have been upheld).

We also do not find an abuse of discretion in the trial court's imposition of monetary sanctions. Defendants submitted an itemized list of fees, and Plaintiff has not challenged the trial court's finding the amount is fair and reasonable.

AFFIRMED.