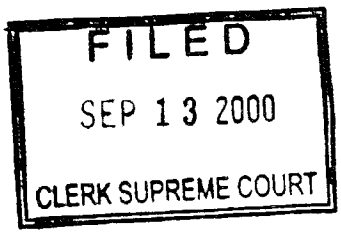
IN THE COURT OF APPEALS OF IOWA

No. 0-269 / 99-1447
Filed September 13, 2000



ALEISHA STYCKET, By Her Next Friend, SUSAN STYCKET, and SUSAN STYCKET, Individually,
Plaintiffs-Appellants,

vs.

JOHN VANORSDEL,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge.

Plaintiffs in a personal injury action appeal from a ruling on defendant's motion in limine which prevented them from introducing evidence of some of the alleged damages. **AFFIRMED.**

Bruce H. Stoltze of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellant.

Matthew J. Haindfield of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by Mahan, P.J., and Vaitheswaran, J., and Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

PETERSON, S.J.

Aleisha Stycket, by her next friend, Susan Stycket, and Susan Stycket, individually, appeal a ruling of the trial court which prevented them from introducing evidence of damages. They contend the trial court erred in entering a discovery sanction against them which prevented them from introducing evidence about past and future pain and suffering, past and future loss of function of the mind and body, and future medical expenses for Susan and for a consortium claim of Aleisha. We affirm.

Background and Proceedings. On April 18, 1996, there was an accident involving a motor vehicle that Aleisha Stycket was operating in Des Moines, Iowa. John Vanorsdel struck the rear end of a motor vehicle being operated by Donna Wetter who in turn struck the rear end of a motor vehicle being operated by Pamela Ternus who in turn struck the rear end of the plaintiffs' vehicle.

On April 13, 1998, a petition was filed by Susan Stycket, individually and on behalf of Aleisha Stycket as her next friend, alleging negligence on behalf of the defendants and requesting compensatory damages.

On June 18, 1998, Vanorsdel propounded interrogatories to the plaintiffs and requested production of certain documents. On September 28, 1998, the plaintiffs provided answers to the interrogatories and responses to the production of documents, however, their answer to Interrogatory No. 11 was "Undetermined at this time. The answer will be amended as the discovery process continues."

This interrogatory asked the plaintiffs to "Identify and describe in detail each and every element of damages plaintiffs claim to have sustained as a result of the defendant's alleged wrongful conduct or act complained of in this litigation." It requested the amounts be stated and the methods and calculations used in support of the claims, including a description of the categories or items of damages allegedly sustained. It requested further supporting information used to arrive at these amounts.

The trial was set for July 12, 1999. The scheduling order provided, among other matters, all discovery shall be completed by May 12, 1999.

On December 1, 1998, Vanorsdel's attorney wrote to the plaintiffs' attorney requesting the answer to Interrogatory No. 11 be supplemented prior to the date of taking the plaintiffs' deposition. On January 7, 1999, Vanorsdel's attorney again wrote to plaintiffs' attorney pointing out Interrogatory No. 11 had not been supplemented. On June 5, 1999, the defendant received supplemental answers to Interrogatories No. 5, 9, 12, and 16, but they did not receive a supplemental answer to Interrogatory No. 11.

Vanorsdel filed a motion in limine which came before the court for hearing at the pretrial conference on July 7, 1999. In that motion, Vanorsdel moved for an order in limine requiring the plaintiffs and their witnesses and counsel to refrain from attempting to admit any evidence concerning plaintiffs' damages because Interrogatory No. 11 had not been supplemented.

On July 7, 1999, after the hearing, the court entered an order sustaining portions of Vanorsdel's motion in limine. The order prohibited Aleisha Stycket

from claiming any damages for past and future pain and suffering and past and future loss of function of mind and body and Susan Stycket from making a claim for loss of consortium up to the time her daughter turns eighteen because they had failed to timely supplement Interrogatory No. 11.

Vanorsdel conceded liability in this matter. Accordingly, the parties agreed as a result of the trial court's ruling, it would not be necessary to impanel a jury and try this matter. They agreed judgment would be entered in favor of the plaintiffs and against the defendant for $660.74 to cover Aleisha Stycket's past medical expenses that the defendant had been advised of.

Discussion. The imposition of discovery sanctions by the trial court is discretionary and will not be reversed unless there has been an abuse of discretion. *Sukow v. Boone State Bank & Trust, Co.*, 314 N.W.2d 421, 425 (Iowa 1982). An abuse of discretion consists of a ruling which rests upon clearly untenable or unreasonable grounds. *Troendle v. Hanson,* 570 N.W.2d 753, 755 (Iowa 1997). Where a sanction selected by the trial court is dismissal of an action, the range of discretion is narrowed. To justify this, a party's noncompliance must be due to willfulness, fault, or bad faith. *Sukow,* 314 N.W.2d at 425.

Iowa Rule of Civil Procedure 134 covers the consequences for failure to make discovery. Aside from this rule, violations of discovery rules may warrant sanctions. *Sullivan v. Chicago Northwestern Transp.,* 326 N.W.2d 320, 324 (Iowa 1982). Before discovery sanctions can be imposed, the offending party must be afforded the opportunity of a hearing. *Schwarz v. Meyer,* 500 N.W.2d

87, 88 (Iowa App. 1993). A preclusive order insures that a party will not be able to profit from its own failure to comply with discovery requests. *Schwartzbach v. Schwartzbach,* 446 N.W.2d 475, 479 (Iowa App. 1989).

For approximately thirteen months in spite of two written requests from the defendant, plaintiff failed to supplement Interrogatory No. 11. The defendant was entitled to be informed of the amount of the plaintiffs' claim. *Gordon v. Noel,* 356 N.W.2d 559, 564 (Iowa 1984). The plaintiff supplemented other interrogatories a few days before trial but did not supplement Interrogatory No. 11.

The plaintiff contends in argument the defendant had secured information concerning the claim for the plaintiff through their discovery proceedings and as a result of a patient's waiver the plaintiff had given to the defendant. However, they discovered no information about the amount of damages claimed by the plaintiff and it is the burden of the plaintiff to provide this information to the defendant. *Id.*

The sanction imposed by the trial court was not a dismissal of the action, although the plaintiff argues it was tantamount to a dismissal. Although not relevant to this ruling, the actions of the plaintiff in ignoring the time constraints imposed by the Rules of Civil Procedure in answering interrogatories as well as ignoring two requests for response from the defendant and then supplementing other interrogatories shortly before trial and continuing to ignore Interrogatory No. 11 amount to willfulness and fault on their part.

The sanction selected by the trial court was one which would prevent the plaintiff from profiting by their delay in responding to the interrogatory. We find

the trial court did not abuse its discretion in imposing the sanction, and it was clearly reasonable under the circumstances.[1]

AFFIRMED.

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[1] It has been suggested that the decline in attorney's strict adherence to rules governing the practice of laws is attributable in part to trial court's failure to demand efficiency during discovery process. *See* Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 522 (1987).