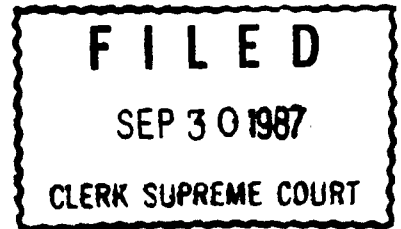


IN THE COURT OF APPEALS OF IOWA



IOWA FALLS STATE BANK, )  
Plaintiff-Appellee, )  
vs. )  
ARILD V. KEPLER and )  
MARY J. KEPLER, )  
Defendants-Appellants. )

Filed September 30, 1987

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86-1579  
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Appeal from the Iowa District Court for Hardin County (No. 70-279) -  
Mark S. Cady, Judge.

Defendants appeal from trial court's order dismissing their counterclaim  
as a discovery sanction. **REVERSED AND REMANDED.**

Larry L. Miller of Hanson, Bjork & Russell, Des Moines, for  
defendants-appellants.

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for  
plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel, and Sackett, JJ.

**SACKETT, J.****125**

We must determine whether the trial court abused its discretion in dismissing defendants-appellants' counterclaim as a discovery sanction. We determine the trial court abused its discretion. We remand to the trial court.

On May 24, 1983, Plaintiff-Appellee Iowa Falls State Bank filed an action against Defendants-Appellants Arild and Mary Kepler. The action sought to foreclose a real estate mortgage given plaintiff by defendants. Defendants counterclaimed for breach of contract to loan money. A summary judgment was entered in favor of the plaintiff in April of 1985 foreclosing the mortgage. Defendants' counterclaim was not resolved in the summary judgment order.

The discovery problem centers around a series of interrogatories numbered 23 to 30 served by the bank on January 21, 1986. On April 23, 1986, the bank filed a motion to compel discovery. On May 8, 1986, defendants answered the interrogatories. On May 19, 1986, plaintiff filed a motion to compel setting forth a series of alleged deficiencies in defendants' answers to interrogatories 23-30. On May 29, 1986, defendants responded to the motion to compel. Defendants alleged the questions asked in the interrogatories had been covered in deposition and said they gave information to the best of their ability. Defendants also noted three interrogatories served on plaintiff November 8, 1985, were not answered.<sup>1</sup>

On June 2, 1986, after a hearing, the trial court found the answers to be incomplete. The court ordered the interrogatories be fully answered in a timely and complete manner or defendants would be subject to sanctions pursuant to Iowa Rule of Civil Procedure 134. On June 9, 1986, the court ordered the case assigned for trial on October 24, 1986, and ordered discovery completed by August 1, 1986. On July 2, 1986, defendants served amended answers. On

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<sup>1</sup> The three interrogatories were not answered until July 17, 1986.

July 7, 1986, plaintiff, claiming the answers were incomplete, filed a motion for sanctions and requested dismissal of the counterclaim. The matter was set for hearing on July 21, 1986. At the hearing defendants orally resisted imposition of sanctions. The court dismissed defendants' counterclaim and denied defendants' motion to reconsider. From these orders defendants have appealed.

Defendants contend the trial court abused its discretion in dismissing their counterclaim. Trial courts possess broad discretion with the imposition of discovery sanctions. R. E. Morris Invs., Inc. v. Lind, 304 N.W.2d 189, 191 (Iowa 1981); Eickelberg v. Deere & Co., 276 N.W.2d 442, 446 (Iowa 1979); Haumersen v. Ford Motor Co., 257 N.W.2d 7, 13 (Iowa 1977).

The Iowa courts have been slow to find abuse of the trial court's discretion in discovery sanction cases. Sullivan v. Chicago & N.W. Transp. Co., 326 N.W.2d 320, 324 (Iowa 1982). A trial court's decision to impose discovery sanctions under rule 134 will not be reversed unless there has been an abuse of discretion. Wernimont v. International Harvester Corp., 309 N.W.2d 137, 143 (Iowa App. 1981). However, the drastic action of dismissal and entry of default judgment should not be ordered in the absence of willfulness, bad faith or fault for refusal to comply with Iowa Rule of Civil Procedure 134. McQuillen v. City of Sioux City, 306 N.W.2d 789, 791 (Iowa 1981); Smiley v. Twin City Beef Co., 236 N.W.2d 356, 360 (Iowa 1975). Because discovery standards are designed to implement, not to impede, fair and speedy determinations of cases, it is suggested "that the court should seek to apply sanctions which affect the evidence at trial and the merits of the case as little as possible." State v. Marchellino, 304 N.W.2d 252, 257 (Iowa 1981) (quoting ABA Standards for Criminal Justice, Discovery and Procedure Before Trial §5.1, Commentary at 108 (1970)).

In exercising its discretion in selection of sanctions for failure to comply with discovery orders, the court should keep in mind "radical surgery should not be performed on the . . . case if conservative therapy will bring about a cure." State v. St. John, 308 N.W.2d 8, 11 (Iowa 1981) (quoting Marchellino, 304 N.W.2d at 257). There is a strong policy favoring a trial on the merits and against depriving a party of his day in court. Fox v. Studebaker-Worthington, Inc., 516 F.2d 989, 996 (8th Cir. 1975). In our system of justice the opportunity to be heard is a litigant's most precious right and should be sparingly denied. Edgar v. Slaughter, 548 F.2d 770, 773 (8th Cir. 1977).

We must determine whether the conduct of defendants shows willfulness, bad faith or fault for refusal to comply with Iowa Rule of Civil Procedure 134. Smiley, 236 N.W.2d at 360. This case is distinguishable from Smiley. In Smiley the court overruled plaintiff's application for entry of a default judgment on the condition defendant file an answer to each interrogatory. Defendant did not file any answers. The issue here is more complicated. Defendants answered the interrogatories. The question is did defendants' answers show bad faith or a willful disregard of the discovery process.

Judging the sufficiency of an answer given to an interrogatory is a complicated task. It is difficult for a court to determine whether a party has answered an interrogatory fairly and accurately. When an answer is sketchy, is the answer given an attempt to thwart the process or merely the result of the answering parties having little evidence to support their position?

Discovery procedures are designed to implement, not to impede, fair and speedy determinations of cases. See Marchellino, 304 N.W.2d at 257. However, the functioning of discovery rules depends upon each party fulfilling his or her obligation thereunder. See Penthouse Int'l, Ltd. v. Playboy Enters.,

Inc., 663 F.2d 371, 390 (2nd Cir. 1981). Discovery works most effectively when parties and their attorneys enter into it in a spirit of cooperation, mindful of its purpose to expedite the delivery of justice. A certain amount of inconvenience inheres in discovery and must be tolerated by the parties. Pollock v. Deere & Co., 282 N.W.2d 735, 739 (Iowa 1979). Provisions for interrogatories are intended to provide for an orderly exchange of information. Ideally the party propounding interrogatories will take the time to draft understandable questions asking for relevant information. Ideally the party answering interrogatories will consider the questions carefully and seek to provide the requested information in an orderly fashion.

Neither party's discovery procedure met the ideal. Defendants were not careful in answering the interrogatories. Defendants did not supply specific information. They made broad reference to information in plaintiff's possession and to information provided in their discovery deposition. Plaintiff's interrogatories each contained a series of questions. Each interrogatory was very broad. Additionally, plaintiff's objections to the interrogatories were in part overtechnical. For example, plaintiff asked defendants to supply the names and addresses of witnesses. Defendants listed as witnesses persons who had been, and may still be, in plaintiff's employment. Plaintiff objected to defendants' failure to supply addresses for these persons. Plaintiff argues and we agree the fact an interrogatory asks for information within the asking parties' knowledge is not a valid objection to an interrogatory. See Barks v. White, 365 N.W.2d 640, 643 (Iowa App. 1985). But we find failure to supply information obviously known to the other party does not rise to the level of bad faith necessary to support a dismissal of litigation.

Reviewing the discovery procedure in its entirety, we determine defendants apprised plaintiff of the fact their claim was based on certain conversations

between defendants and plaintiff's employees. Additionally, defendants' claims for damages are based in part on cashier checks drawn on plaintiff bank. Defendants may well be limited in their proof by their sketchy answers. But the issue before us is not whether these facts supply sufficient evidence to support the allegations of defendants' counterclaim. The issue of sufficient evidence to support a claim should be addressed in other procedures, for example by summary judgment.

The issue is whether defendants' answers show bad faith or fault. We determine they do not. The trial court abused its discretion in dismissing defendants' counterclaim as a discovery sanction. Discovery sanctions short of dismissal may be proper. We remand to the district court for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**