FILED
JUN 24 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ELMO C. TATUM,

Plaintiff-Appellant,

vs.

FIRST NATIONAL BANK, IOWA CITY, IOWA,

Defendant-Appellee.

Filed June 24, 1987

282

6-521
85-937

Appeal from the Iowa District Court for Johnson County (No. 4-8948), L. Vern Robinson, Judge.

Plaintiff appeals from the district court's dismissal of his lawsuit for failure to cooperate with discovery procedures. **AFFIRMED.**

Elmo C. Tatum, plaintiff-appellant, pro se.

C. Peter Hayek of Hayek, Hayek, Hayek & Holland, Iowa City, for defendant-appellee.

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

DONIELSON, P.J.

The plaintiff, Elmo C. Tatum, appeals from the district court's dismissal of plaintiff's lawsuit for his failure to cooperate with discovery procedures. Tatum, acting pro se, contends the dismissal was an abuse of the district court's discretion. We affirm.

On January 3, 1985, Tatum filed the present action in Johnson County District court against the defendant First National Bank in Iowa City, alleging that the Bank wrongfully attached his social security check in the amount of $394.00. Tatum prayed for judgment against the defendant Bank in the amount of $25 million. In late April 1985, the defendant Bank served notice of their intent to take Tatum's deposition on May 16, 1985. However, due to a scheduling conflict, notice was served upon Tatum rescheduling the deposition for May 22, 1985. Notice was mailed to Tatum on May 2, 1985. Tatum failed to appear for the deposition.

On May 24, 1985, the defendant Bank applied to the court for appropriate orders pursuant to Iowa Rule of Civil Procedure 134, including a request for an order directing Tatum to appear for a deposition. The district court entered an order concerning discovery on June 4, 1985, setting a hearing for June 28, 1985, and specifically directing Tatum to be present at the hearing for the purpose of allowing the defendant Bank to take his deposition subsequent to the hearing. On June 6, 1985, Tatum filed a notice of appeal stating that "a timely appeal will be made to the Iowa Supreme Court regarding court's order of June 4, 1985 . . . ."

On June 28, 1985, at the time established by the district court's June 4, 1985, order, the defendant Bank appeared for the hearing, but Tatum did not. The district court then dismissed Tatum's lawsuit upon motion of the defendant Bank pursuant to Iowa Rule of Civil Procedure 134(b)(2)(c).

Our scope of review is for the correction of errors at law only. Iowa R. App. P. 4. A trial court is vested with broad discretion in imposing sanctions under rule 134 and we will not reverse such an order unless there has been an abuse of that discretion. Rumley v. City of Mason City, Iowa, 320 N.W.2d 648, 652 (Iowa App. 1982).

Iowa Rule of Civil Procedure 134(b)(2)(c) provides that if a party fails to obey a court order to provide or permit discovery, the court may choose from a variety of available sanctions, including dismissal of the action. In Suckow v. Boone State Bank & Trust Co., 314 N.W.2d 421, 425-26 (Iowa 1982), the Iowa Supreme Court distinguished between two classes of discovery sanction cases involving the sanction of dismissal. The court initially noted that where the trial court selects the sanction of dismissal, the trial court's generally broad discretion is narrowed. 314 N.W.2d at 425. In order to justify a dismissal of a party's action, such noncompliance must be due to willfulness, fault, or bad faith. Id.

The court in Suckow first analyzed a number of cases involving a violation of a trial court order concerning discovery. 314 N.W.2d at 425-26. The court noted that in those cases where there was a specific violation of a court order, the sanction of dismissal was generally upheld. See McQuillen v. City of Sioux City, 306 N.W.2d 789, 792 (Iowa 1981); Smiley v. Twin City Beef Co., 236 N.W.2d 356, 360 (Iowa 1975); Bos Lines, Inc. v. Phillips, 226 N.W.2d 819, 820-21 (Iowa 1975). The second class of cases involved violations of a rule of civil procedure only. Suckow, 314 N.W.2d at 426. The court opined that where no trial court order has been disobeyed, a lesser sanction may be more appropriate. Id.

In the present case the district court specifically ordered that Tatum appear at the scheduled June 28, 1985, hearing in order to allow the defendant Bank to take his deposition. Tatum did not appear and therefore violated the

court's order. Tatum has offered no explanation as to why he failed to appear at the June 28, 1985, hearing. We therefore find no abuse of discretion in dismissing Tatum's lawsuit pursuant to rule 134(b)(2)(c).

AFFIRMED.