IN THE COURT OF APPEALS OF IOWA

No. 5-415 / 93-1608

DANIEL F. PALMER,

Plaintiff/Counterclaim Defendant-Appellee,

vs.

JOHN HANCOCK,

Defendant/Counterclaim Plaintiff-Appellant.

FILED
OCT 31 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, David J. Sivright, Judge

John Hancock appeals from the dismissal of his counterclaims against Daniel Palmer after Palmer voluntarily dismissed his nuisance suit. **AFFIRMED.**

John Hancock, Anaheim, California, pro se, appellant.

Jack Dusthimer, Davenport, for appellee.

Considered by Sackett, P.J., and Habhab and Huitink, JJ.

PER CURIAM

Originally, Daniel Palmer filed a nuisance action against John Hancock in which Palmer alleged Hancock's building (the Vale) was in serious disrepair. Palmer held a news conference making those same allegations. Hancock filed a counterclaim, pro se, in which he "pray[ed] for a temporary restraining order and injunction against further threats and harassment and an award of actual damages for the emotional distress inflicted upon" him.

The procedural history of this case is extensive and lengthy. Eventually, Palmer voluntarily dismissed his nuisance claim. Hancock's counterclaim for emotional distress was dismissed upon Palmer's motion for summary judgment in August 1991. His counterclaim for injunctive relief was dismissed as a sanction for "continued failure to complete discovery" which the trial court found to be "willful and in bad faith" in September 1993.

Hancock appeals. We affirm.

While Hancock raises a number of issues on appeal, we must first determine whether dismissal in September 1993 was a proper sanction in this case. If dismissal was a proper sanction, then all of the other issues raised on appeal become moot. *Krugman v. Palmer College*, 422 N.W.2d 470, 473 (Iowa 1988).

The imposition of discovery sanctions is discretionary and will not be reversed unless there has been an abuse of discretion. *Suckow v. Boone State Bank & Trust Co.*, 314 N.W.2d 421, 425 (Iowa 1982). Where the sanction chosen is the dismissal

of an action, the range of discretion narrows. *Smiley v. Twin City Beef Co.*, 236 N.W.2d 356, 360 (Iowa 1975). In order to justify dismissal of the action as a sanction, a party's non-compliance must be due to willfulness, fault, or bad faith. *Suckow*, 314 N.W.2d at 425.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

In its order imposing the sanction, the district court set out in a detailed manner much of Hancock's behavior leading up to that point in the proceedings. The court noted Hancock did not timely file his witness list as called for in the court order filed subsequent to the pretrial conference.[1] After being requested to submit a draft consent order, Hancock attempted ex parte communication concerning the case. The district court refused to consider the communication. Hancock failed to submit settlement conference documents, including a proposed stipulation of uncontested facts, a statement of contested facts, an exhibit list, and a trial brief. This failure was in violation of local court rules. The district court also noted Hancock had been

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[1] Once a witness list was untimely filed, the witness list was made up of thirty-one names including a district court judge, the mayor of Davenport, and the widow of Hancock's previous attorney.

sanctioned earlier in the litigation for "clear and positive failures to make discovery pursuant to court orders."

We are unable to find the district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. The question is not whether sanctions should be imposed, but rather whether the district court abused its discretion. We find no abuse of discretion by the district court.

AFFIRMED.

Habhab and Huitink, JJ., concur; Sackett, P.J., specially concurs without opinion.