IN THE COURT OF APPEALS OF IOWA

No. 6-671 / 96-0649 000206

FILED
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CLERK SUPREME COURT

FRANCES L. JACOBSON,

Plaintiff-Appellant,

vs.

KARA ROCHELLE JOHNSON and JAY E. JOHNSON,

Defendants-Appellees.

Appeal from the Iowa District Court for Allamakee County, John Bauercamper, Judge.

Plaintiff appeals from the district court's order dismissing her petition as a sanction for failing to obey discovery orders. **AFFIRMED.**

Bruce L. Braley of Dutton, Braun, Staack, Hellman & Iversen, P.L.C., Waterloo, and Gregory J. Egan of Parke O'Flaherty, LTD., LaCrosse, Wisconsin, for appellant.

Donald H. Gloe of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellees.

Considered by Habhab, C.J., Huitink and Vogel, JJ.

PER CURIAM

Frances Jacobson appeals from the district court's order dismissing her petition as a sanction for failing to obey discovery orders. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Jacobson was allegedly injured in a motor vehicle accident in Waukon, Iowa on June 4, 1993, involving a vehicle owned and operated by Jay and Kara Johnson. Jacobson retained Gregory Egan of LaCrosse, Wisconsin to represent her in a personal injury claim. Egan was not licensed to practice in Iowa so he engaged the services of J. D. Villont of West Union, Iowa to represent Jacobson.

In May 1995 Villont filed a petition against the Johnsons. Villont was the only attorney of record. On June 15, 1995 the Johnsons served Jacobson with interrogatories. Jacobson's signed answers were returned on August 22. On September 20 the Johnsons filed a motion to compel discovery, requesting more complete answers to two interrogatories (concerning expected expert witnesses and prior or subsequently suffered injuries). After a hearing on October 16, the district court ordered Jacobson to comply with all current discovery requests in three weeks. Jacobson was assessed attorney fees in the amount of $90.

On November 20, 1995, the Johnsons filed a motion for sanctions because Jacobson had failed to comply with discovery requests as ordered. A hearing scheduled for December 27 was continued at the request of the parties' attorneys. At the January 22, 1996 hearing on the Johnsons' motion for sanctions Villont accepted

fault for failure to comply as previously ordered. The district court thereafter ordered: "Plaintiff's counsel shall comply with all outstanding discovery requests no later than February 22, 1996. . . . Failure to meet this deadline will result in the dismissal of plaintiff's petition with prejudice."

On February 23, 1996 the Johnsons requested a dismissal due to Villont's failure to respond to discovery requests or communicate with defendants' counsel. The district court reviewed the court file and found no filings certifying compliance with the court's January 22 order. The court dismissed the petition with prejudice.

Jacobson, through Wisconsin counsel, moved to set aside the dismissal on March 4. Both Jacobson and Egan asserted they were unaware of Villont's noncompliance. Jacobson also filed a petition to vacate or modify judgment, a motion to set aside default judgment, and a renewed motion to set aside the order of dismissal. Johnsons resisted all the motions. The court set the motions for hearing, after which the district court determined dismissal had been an appropriate sanction and the court had followed appropriate procedures. Jacobson appeals.

Our review is for the correction of errors at law. Iowa R. App. P. 4. Discovery sanctions will not be reversed unless the trial court has abused its discretion. *Bindel v. Larrington*, 543 N.W.2d 912, 914 (Iowa 1995). In order to show an abuse of discretion, one generally must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*

Citing *Kendall/Hunt Publishing Co. v. Rowe*, 424 N.W.2d 235, 240-41 (Iowa 1988), Jacobson contends that before dismissing a case as a discovery sanction, the district court must issue an order to show cause directing the party and the attorney to appear to determine their respective culpability. We think Jacobson reads too much into the *Kendall/Hunt* decision. There, a district court had dismissed the plaintiff's action before a scheduled hearing on the issue of appropriate sanctions was held. The district court later granted the plaintiff's motion to reinstate the case. In holding that the district court did not abuse its discretion in reinstating the case, the supreme court had to determine whether the original dismissal order had been correctly entered. The supreme court noted that "fundamental fairness should require a district court to enter an order to show cause and hold a hearing, if deemed necessary, to determine whether assessment of costs and attorney fees or even an attorney's citation for contempt would be a more just and effective sanction." *Id.* at 915. The supreme court then concluded that had the district court held such a hearing, it would not have entered the order of default and, therefore, the order to set aside default was not an abuse of discretion.

Here, the district court held three hearings related to appropriate discovery sanctions. The court first assessed attorney fees and granted Jacobson additional time to comply. The court then granted a continuance allowing more time to comply. After a second hearing, at which Villont accepted fault for the failure to comply, the court granted counsel thirty days to comply with outstanding discovery requests, but

warned counsel that failure to meet this deadline would result in dismissal of Jacobson's petition.

We do not approve of the district court dismissing a petition without a hearing, at least absent a warning to counsel that it would be done. However, Jacobson did receive a hearing after the dismissal on the issue of what was an appropriate discovery sanction for counsel's failure to comply with court orders. At that hearing, the court was informed of all the circumstances. The court concluded dismissal had been an appropriate sanction. We believe any error in dismissing the petition without a hearing was corrected by this subsequent hearing. We think the district court's actions satisfy notions of fundamental fairness.

"[C]lients are responsible for the actions of their lawyers and in appropriate circumstances dismissal or default may be visited upon them because of the actions of their lawyers." *Kendall/Hunt* 424 N.W.2d at 241. Dismissal may be an appropriate discovery sanction when a party's attorney is aware of, and fails to comply with, a court's discovery orders. *See Krugman v. Palmer College of Chiropractic*, 422 N.W.2d 470, 474 (Iowa 1988). The district court did not abuse its discretion here in dismissing Jacobson's petition as a sanction for counsel's repeated failure to comply with discovery orders. We affirm.

AFFIRMED.