IN THE COURT OF APPEALS OF IOWA

No. 0-496 / 89-1835

FILED
APR 02 1991
CLERK SUPREME COURT

PHILLIP C. CARPER,

Appellant,

vs.

REBECCA E. HUMPHREY,

Appellee.

Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge.

Plaintiff appeals the district court order which, as a discovery sanction, dismissed his action. **AFFIRMED.**

Steven R. Hahn of Ruther, Bauer, Schulte, Hahn, Swanson & Crowley, for plaintiff-appellant.

Craig D. Warner of Aspelmeier, Fisch, Power, Warner & Engberg, for defendant-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

Plaintiff Phillip Carper filed his petition on June 30, 1988, seeking damages against the defendant Rebecca Humphrey for injuries sustained during a motor vehicle accident. The posture of the case never reached its merits because of a dispute the parties had over plaintiff's failure to answer defendant's interrogatories and failure to produce the documents defendant requested.

On July 28, 1988, Carper served twenty-nine interrogatories on Humphrey and requested that Carper produce certain documents. Because Carper did not respond, Humphrey filed a motion to compel discovery on December 16, 1989. Carper filed no resistance. The district court sustained Humphrey's motion and ordered that the interrogatories be answered, and the documents be produced, not later than January 23, 1989.

Because Carper again failed to respond, Humphrey moved for sanctions. On February 14, 1989, the court found Carper had violated the court's order compelling discovery and that Carper should be sanctioned. The district court ordered Carper to pay Humphrey seventy-five dollars for attorney fees and also ordered that since Carper had failed to respond to the discovery request for a period of approximately six months, Carper should be deprived of interest on any recovery for a period of approximately six months.

On April 6, 1989, Humphrey again moved for sanctions, seeking to compel compliance with the two previous court orders entered on January 3, 1989, and on February 14, 1989. At this point the case had been set for trial on November 7, 1989, and Humphrey had not yet received the discovery which he had sought. After a hearing, the district court concluded on May 5, 1989, that additional sanctions should be imposed against Carper. The court ordered that all prejudgment interest be taken away from Carper and that he must pay Humphrey an additional $150 in attorney fees caused by Carper's continuing failure to obey the court's previous orders. The court gave Carper until May 18, 1989, to comply with the requested discovery.

On June 6, 1989, Humphrey filed yet another motion for sanctions, complaining Carper was continuing to ignore the court's previous orders because Carper had only partially complied with Humphrey's discovery requests. After a hearing, the district court ordered on August 15, 1989, Carper's action be dismissed. The court observed Carper's discovery responses were unacceptable, and in light of the three previous court orders, Carper's responses could only be regarded as a totally willful and contemptuous violation of the three previous court orders. The court observed that although Carper's counsel had filed an affidavit indicating all the requested discovery items had been produced, the affidavit was false. Many of the items were still in Carper's possession. We affirm the district court's dismissal.

Our courts have long recognized that "imposition of discovery sanctions by a trial court is discretionary and will not be reversed unless there is an abuse of discretion." Suckow v. Boone State Bank, 314 N.W.2d 421, 425 (Iowa 1982); Eickelberg v. Deere & Co., 276 N.W.2d 442, 446 (Iowa 1979). Where, however, the trial court selects dismissal of the action as the appropriate discovery sanction, the range of discretion is narrowed. Postma v. Sioux Center News, 393 N.W.2d 314, 318 (Iowa 1986). In order to justify dismissal of the action, a party's noncompliance must be due to willfulness, fault, or bad faith. Id.

Iowa decisions involving discovery sanctions have been divided into two categories: (1)violation of a trial court discovery order, and (2)violation solely of a rule of civil procedure relating to discovery. Postma, 393 N.W.2d at 318. Dismissal as a sanction has generally been used when there is a clear and willful violation of a trial court discovery order. Suckow, 314 N.W.2d at 426.

Pursuant to the foregoing authorities, we conclude the trial court did not abuse its discretion in dismissing Carper's action. The trial court filed three discovery orders in the present case. At the time of dismissal pursuant to the trial court order dated August 15, 1989, Carper had still not fully complied with the discovery orders. Many of the medical documents requested by Humphrey were still in his possession, despite the

affidavit from his counsel stating the documents and interrogatories had already been delivered. We agree with the trial court that Carper's excuses for failing to comply with the trial court discovery orders are utterly lame. The accident had occurred almost three years prior to the trial court's order of dismissal. Carper had almost one year in which to respond to Humphrey's discovery requests. We find no merit to this argument.

Carper's argument that the district court ignored Local Rule 14 of the Eighth Judicial District is misplaced. The crux of the present case is not whether Carper is being punished for failing to respond timely to the discovery requests per se, but whether the trial court was justified in dismissing the case based on Carper's willful violation of three discovery orders of the court.

Pursuant to Iowa Rule of Civil Procedure 134(b)(2), the district court is empowered to enforce its own orders by a number of methods, one of which is dismissal. Though Carper points to Local Rule 14 and Iowa Rule of Civil Procedure 122(e), which are virtually identical, and which require certification by opposing counsel that he or she has made a good faith effort to obtain compliance, both of these rules pertain to failures to comply with rules of civil procedure regarding discovery, not with violations of a court order.

AFFIRMED.