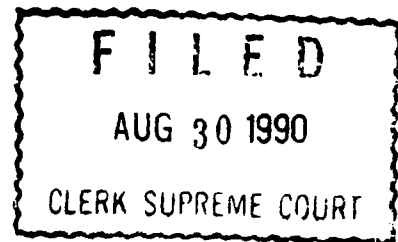


IN THE COURT OF APPEALS OF IOWA

No. 0-289 / 89-1677



WALLACE R. COTT,

Appellant,

vs.

RON COY, COY BUILDERS, and DICK COY & SONS,

Appellees.

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Appeal from the Iowa District Court for Story County,
Newt Draheim, Judge.

Cott appeals the district court's decision granting
summary judgement stemming from his failure to timely
respond to Coy's requested admissions. **AFFIRMED**

Kirk E. Goettsch of Clark, Hastings & Goettsch, Ames,
for appellant.

Larry R. Curtis of Singer, Pasley, Holm, Timmons,
Mathison & Curtis, Ames, for appellees.

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

OXBERGER, C.J.

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Wallace R. Cott sued Ron Coy, Coy Builders, and Dick Coy & Sons (Coys) for breach of a construction contract causing damage to the siding of Cott's residence. Cott appeared pro se throughout the district court proceedings. The Coys answered the petition and alleged that Cott signed a document releasing the Coys from liability for the defective siding.

The Coys served requests for admissions on Cott. Cott failed to respond within thirty days. The Coys then filed a motion for summary judgment. The Coys' motion was supported by the requests for admissions which were deemed admitted by Cott's failure to respond within thirty days. At the hearing on the motion for summary judgment, Cott made a motion to extend time to answer the requested admissions and a motion to withdraw the admissions. The court denied both of Cott's motions. The court granted the Coys' motion for summary judgment. Cott appeals.

Cott contends that the district court erred in granting the Coys' motion for summary judgment. Cott states the Coys' requests for admissions and affidavit supporting their motion for summary judgment both failed to attach a copy of the alleged release. Cott also claims his twelve-day delay in responding to the requests for admissions was not prejudicial to the Coys. For these reasons, Cott asserts a factual issue concerning the

existence, validity, and interpretation of the release existed.

Cott further claims the district court erred by overruling Cott's: 1) motion for extension of time to answer requested admissions; 2) motion to withdraw admissions; 3) objections to the Coys' requested admissions; and 4) motion to vacate, amend, or set aside the summary judgment.

Lastly, Cott contends the district court held Cott, a pro se litigant, to a stricter standard of compliance with the rules of civil procedure than Larry R. Curtis, the Coys' attorney.

We will first address Cott's claim the trial court erred in granting Coys' motion for summary judgment. Cott attempts to justify not responding to Coys' requests for admissions within thirty days, pursuant to Iowa Rule of Civil Procedure 127, by complaining that a copy of the release was not included with the requests. However rule 127 states, "The matter is admitted unless, within thirty days after service of the request, . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter." Iowa R. Civ. P. 127. Hence, Cott was required to object to the request within the thirty-day limit if he believed the release should have been included. He failed to do this. Thus, the trial court

properly deemed the existence of the release as admitted. By his failure to respond, Cott has eliminated this issue from controversy.

Because we have determined the existence of the release, as described in the request for admission, the trial court properly granted Coys' motion for summary judgment.

Next, Cott argues the district court abused its discretion in overruling his objections to Coys' requested admissions and in failing to grant his motion to vacate, amend, or set aside the summary judgment. "A discretionary ruling is presumptively correct, and on appeal will be overturned only where an abuse of discretion has been demonstrated. An abuse is found only where the discretion is exercised on grounds or for reasons clearly unreasonable." Sheer Const., Inc. v. Hodgman and Sons, Inc., 326 N.W.2d 328 (Iowa 1982). In the present case, Cott fails to overcome the presumption of correctness. The trial court's discretionary rulings were not clearly unreasonable.

Cott also claims he was held to a stricter standard of compliance with the Rules of Civil Procedure than a licensed attorney would be. This is not true. There is only one set of laws regarding procedure; both attorneys and pro se litigants are equally required to follow them. Cott points out two occasions where he believes Coys'

attorney failed to observe proper civil procedure. However, because of Cott's failure to respond to the requested admissions in any way, these issues are moot. "A lay person who fails to utilize professional assistance should be ready to take the consequences." Simmons v. Brenton Nat. Bank of Perry, 390 N.W.2d 143, 145 (Iowa App. 1986) (citing State v. Walker, 236 N.W.2d 292, 295 (Iowa 1975)).

For the above stated reasons, the decision of the district court is affirmed.

AFFIRMED