IN THE COURT OF APPEALS OF IOWA

No. 3-087 / 92-1209

FILED
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CLERK SUPREME COURT

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DAVID SPIELMAN, BARBARA SPIELMAN, and FERDEL HORTON,
Plaintiffs,

F.W. HORTON,
Appellant,

DWIGHT CALKINS and FERNE CALKINS,
Plaintiffs,

vs.

HUMBOLDT TRUST AND SAVINGS BANK,
Appellee.

Appeal from the Iowa District Court for Humboldt County, Louie F. Beisser, Judge.

F. W. Horton, a beneficiary under a will, appeals the district court's order dismissing his petition with prejudice for willful failure to comply with the court's order. **AFFIRMED.**

Joseph B. Joyce of Adler, Brennan & Joyce, Des Moines, for appellant.

Kurt J. Stoebe of Stoebe Law Office, Humboldt, and Michael P. Mallaney of Smith, Schneider, Stiles, Mumford, Schrage, Zurek, Wimer & Hudson, P.C., Des Moines, for appellee.

Heard by Oxberger, C.J. and Schlegel and Hayden, JJ.

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SCHLEGEL, J.

The sole remaining plaintiff, F. W. Horton, a beneficiary under a will, appeals the district court's order dismissing his petition as a result of willful failure to comply with the court's order. Horton contends the court abused its discretion by dismissing his petition with prejudice.

On October 29, 1990, F. W. and Ferdel Horton, David and Barbara Spielman, and Dwight and Ferne Calkins, beneficiaries of the estate of Dewitt Collins, filed a petition against the executor of the estate, Humboldt Trust and Savings Bank. The plaintiffs alleged fraud and breach of fiduciary duty.

The bank submitted interrogatories and a request for production to the plaintiffs and also served notice of depositions on the plaintiffs. David Spielman responded to the discovery request on behalf of all the plaintiffs. The bank later filed a motion to compel discovery and a motion for sanctions.

On November 25, 1991, the district court sustained the bank's motion to compel. The district court ordered the plaintiffs to recast their answers to certain interrogatories and make them more specific within twenty days from the date of the order. The district court also ordered the plaintiffs to make themselves available for depositions. The district court denied the motion for sanctions.

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Pretrial proceedings were hampered by numerous motions by all parties. Subsequently, the bank filed a motion for sanctions for failure of some of the plaintiffs to attend their depositions, a motion to compel answers to interrogatories, and a motion for sanctions for failure to obey the court order. In February 1992 the Speilmans and the Calkins withdrew from the case.

A hearing was held on the motion for sanctions on March 24, 1992. The district court found that F. W. Horton had failed to provide any information in his deposition dealing with itemization of figures requested by the bank. The bank had first requested itemization of damages in its initial interrogatories. F. W. Horton did deliver material the bank requested at the time of his deposition on February 8, 1992. The district court found that F. W. Horton's activities did not suffice to comply with its prior order. The district court found that F. W. Horton's answers to his interrogatories were evasive and his supplemental answers failed to comply with the order and the rules of civil procedure.

The district court further found that the plaintiffs' conduct throughout the case had been willful and in bad faith. In addition, the court found that the plaintiffs' violations of its order were intentional and deliberate. The court scheduled a hearing and advised all the plaintiffs that it was contemplating sanctions as a result of their willfulness, fault, and bad faith.

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On June 12, 1992, the district court found that the plaintiffs' failure to comply with the court order on November 25, 1991, showed willfulness, fault, and bad faith. The district court concluded that it had no alternative but to dismiss the cause of action with prejudice. On June 17, 1992, F. W. Horton filed a rule 179(b) motion requesting the court to amend and reverse its order, and the bank filed an objection to the motion to amend. The district court denied the motion, and F. W. Horton has appealed. We affirm.

> Imposition of discovery sanctions by [a] trial court is discretionary and will not be reversed unless there has been an abuse of discretion. [Citations omitted.] Where, however, the sanction selected by [a] trial court is dismissal of the action, the range of discretion is narrowed. [Citation omitted.] In order to justify dismissal of the action, a party's non-compliance must be due to willfulness, fault or bad faith. [Citations omitted.]

Suckow v. Boone State Bank & Trust Co., 314 N.W.2d 421, 425 (Iowa 1982). Iowa Rule of Civil Procedure 134(b)(2)(c) expressly authorizes the dismissal of an action as a sanction where a party fails to comply with a discovery order if the noncompliance is due to the willfulness, fault, or bad faith of the party. See Eaton v. Meester, 464 N.W.2d 691, 693 (Iowa App. 1990).

We have reviewed the record in the instant case thoroughly. There is no question that the plaintiffs failed to comply with the district court's order, filed November 25, 1991. This order required the plaintiffs to

recast their answers to defendant's interrogatories numbers 2, 4, 6, 19, and 20 and to produce certain documents requested by the defendant. The court ordered the plaintiffs to supplement discovery by complying with both of these requests within twenty days of the date of the order. The plaintiffs unquestionably failed to do so.

The plaintiffs' initial answers to the defendant's interrogatories numbers 2, 4, 6, 19, and 20 are clearly evasive, incomplete, and unresponsive. The plaintiffs' answer to interrogatory number 20 is illustrative of the general incompleteness of the plaintiffs' answers to interrogatories:

> INTERROGATORY NO. 20: Identify any and all witnesses whom you intend to call at trial giving their full name and address and describing their testimony.
>
> ANSWER: See Interrogatory #19. The decision ultimately rests with Mr. Joseph Joyce, Attorney for the Plaintiffs.

The plaintiffs' answer to interrogatory 19 also fails to provide a proper response to interrogatory 20 as propounded by the defendant. Furthermore, the plaintiffs' supplemental answers to the defendant's interrogatories are equally as incomplete and unresponsive and fail to comply with the court's November 25, 1991, order.

Another specific example of the plaintiffs' dilatory compliance with the district court's order involves the plaintiff's failure to produce information concerning the itemization of damages claimed. Despite being ordered by

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the court to produce an itemization of damage figures in response to interrogatory number 2 within twenty days of the order, the plaintiff did not do so until February 8, 1992.

Based on this record, we agree with the district court's statement that:

> The Court has no other alternative in a case of this type where the parties will not comply with a Court Order or [the Iowa] Rules [of Civil Procedure] but to dismiss their cause of action. They refuse to comply with the Court Order or to follow the Rules permitting a party to secure information to get ready for trial.

Accordingly, we believe the district court was correct in dismissing F. W. Horton's case as a result of Horton's willful and bad faith refusal to comply with the court's order.

AFFIRMED.