IN THE COURT OF APPEALS OF IOWA

No. 1-500 / 91-22

FILED
APR 28 1992
CLERK SUPREME COURT

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ROBERT A. RITZ,

Appellant,

vs.

CHARLES F. SCOTT,

Appellee.

Appeal from the Iowa District Court for Wapello County, Robert Bates, Judge.

Plaintiff appeals the district court's dismissal of his personal injury suit on the basis of appellant's failure to answer discovery requests. **AFFIRMED.**

Michael J. Manno, West Des Moines, for appellant.

Thomas M. Walter of Johnson, Hester & Walter, Ottumwa, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Robert A. Ritz filed this action against Charles F. Scott on March 4, 1988. Ritz alleged Scott had assaulted him and caused serious personal injuries. Ritz sought damages for medical expenses, lost income, and pain and suffering. Scott denied the allegation and filed a permissive counterclaim seeking payment of $17,514 for accounting services he performed for Ritz.

A scheduling order was filed in the case on November 21, 1988. The case was set for trial on April 25, 1989. Pursuant to the scheduling order, discovery was to be completed by March 25, 1989.

On March 10, 1989, Scott made a request for production of documents and served interrogatories to Ritz. Scott also scheduled a deposition of Ritz on March 20, 1989. Ritz did not respond to these discovery requests, and he failed to appear for the deposition. Scott then filed a motion to compel discovery on March 22, 1989. Both parties moved for a continuance. The district court reset the case for February 6, 1990.

Ritz's counsel, John Miller, filed an application to withdraw in July 1989. Miller filed a motion for continuance and a second application to withdraw in December 1989. The district court granted the application to withdraw but denied the continuance.

On January 12, 1990, the case was dismissed pursuant to Iowa Rule of Civil Procedure 215.1. Ritz subsequently

hired a new attorney. He filed an application to reinstate the case on July 7, 1990. The district court reinstated the case and ordered that all discovery should be completed by September 15, 1990. The case was set for a pretrial conference on November 26, 1990, and for trial on December 18, 1990.

On November 26, 1990, Scott filed a motion asking for sanctions because Ritz had still not responded to his discovery requests. The district court granted Scott's motion to compel discovery but did not impose any sanctions. The court entered a pretrial order to the effect that discovery should be completed by the time of trial and that counsel should exchange complete witness and exhibit lists no later than four days prior to trial.

Scott objected to the pretrial order because no sanctions were imposed. The district court then held a hearing on the motion for sanctions on December 10, 1990. The court found Scott had no obligation to serve new discovery requests after Ritz obtained new counsel and the case was reinstated. The court dismissed Ritz's petition on the ground that he had ignored all discovery requests and that because of the age of the case a continuance would not be appropriate. Scott then voluntarily dismissed his counterclaim. Ritz has appealed.

Iowa Rule of Civil Procedure 134(b)(2)(C) expressly authorizes a court to dismiss an action as a sanction for failing to comply with a discovery order. Eaton v.

Meester, 464 N.W.2d 691, 693 (Iowa App. 1990). Imposition of discovery sanctions by a district court is discretionary and will not be reversed unless there has been an abuse of discretion. Clark v. Sisters of Mercy Health Corp., 458 N.W.2d 398, 400 (Iowa App. 1990). However, where the sanction selected by the trial court is dismissal of the action, the range of discretion is narrowed. Suckow v. Boone State Bank & Trust Co., 314 N.W.2d 421, 425 (Iowa 1982). In order to justify dismissal of the action, there must be a finding the party's refusal to comply with a discovery request was due to willfulness, fault, or bad faith. Krugman v. Palmer College of Chiropractic, 422 N.W.2d 470, 473 (Iowa 1988). Generally, the sanction of dismissal is used when a party has violated a trial court's order. Munzenmaier v. City of Cedar Rapids, 449 N.W.2d 369, 371 (Iowa 1989).

We determine the district court did not abuse its discretion in ordering the dismissal of this case. Ritz made no attempts to comply with any discovery orders. We find his refusal to comply was willful. Ritz was given many opportunities to avoid sanctions. He can blame only himself for his lack of cooperation in discovery. Furthermore, we note Ritz failed to diligently prosecute this case.

We affirm the ruling of the district court dismissing this action pursuant to Iowa Rule of Civil Procedure 134(b)(2)(C).

AFFIRMED.