IN THE COURT OF APPEALS OF IOWA

No. 6-050 / 94-1184

CLARENCE E. LOGAN and LEOTA I. LOGAN,

Plaintiffs-Appellants,

vs.

GREG MILLER; EDWARD D. JONES & COMPANY, a limited partnership; and E.D.J. HOLDING COMPANY, INC.,

Defendants-Appellees.

FILED
AUG 3 0 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Plaintiffs challenge order dismissing their suit as a sanction for discovery violations. **AFFIRMED.**

Nicholas G. Pothitakis, Steven J. Crowley, and Darwin Bunger of Crowley & Bunger, Burlington, and Norman Rifkind, Philip Fertik, and Patrick J. Sherlock of Beigel, Schy, Lasky, Rifkind, Goldberg & Fertik, Chicago, Illinois, for appellants.

David A. Hirsch of Beckman, Hirsch, Ell & Lewis, Burlington, and Helen Pauling Gab, St. Louis, Missouri, for appellees.

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

HABHAB, J.

At issue in this appeal is whether the trial court abused its discretion in dismissing plaintiffs' action as a sanction for discovery violations. We find no abuse of discretion and affirm.

I. Chronology of Relevant Events. The following dates and events are relevant to the disposition of this appeal.

> **11-17-92** Plaintiffs Clarence Logan and Gary Wagner filed suit against defendants claiming negligent misrepresentation and breach of fiduciary duty in connection with securities investments. The claims of Logan and Wagner were severed on March 4, 1993. The appeal from the dismissal of Wagner's companion case is also pending before this court (*Wagner v. Miller, et. al.*, No. 94-1501 / 6-051). Logan's wife was subsequently added as a party to her husband's action on July 26, 1993. Her responses to discovery requests did not significantly differ from those made by her husband.
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> **12-24-92** Defendants' first set of interrogatories was propounded to Logan. Interrogatory twenty-one asked Logan to specify the amount and basis for his damages.[1] Defendants granted Logan's request for an additional twenty-eight days to answer the discovery requests.
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> **2-22-93** Logan sent defendants unverified and unsigned draft responses to the interrogatories.

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[1] INTERROGATORY NO. 21: For each item of damages alleged in your Petition, please state the total amount of such damages; state the basis for and the calculations used to arrive at such amount alleged as damages; state whether there are alternative methods by which you contend damages might be computed as to any claim against Defendants, and, if so, state such method and the total amount of damages using such method which you claim to have suffered; identify all documents that relate to your claimed damages, or were used in connection with preparing your responses to this Interrogatory; identify all persons having any knowledge of your damages or the computation thereof.

3-25-93 Logan sent defendants signed responses to the interrogatories but they continued to lack the required verification.

4-12-93 Logan filed verified and signed responses to defendants' first set of interrogatories. In responding to interrogatory twenty-one, Logan claimed he had not yet computed his damages. He objected to that portion of the interrogatory which asked him to identify documents related to his damages. He indicated the burden of ascertaining his amount of damages was substantially the same for plaintiffs and defendants.

7-15-93 The district court set February 15, 1994, as the discovery deadline and scheduled trial for July 19, 1994.

12-7-93 Logan filed supplemental responses to defendants' first set of interrogatories. These responses did not include a supplement to Logan's prior response to interrogatory twenty-one

1-12-94 Defendants filed a motion to compel discovery. The motion addressed numerous problems with Logan's responses to discovery requests, including his response to interrogatory twenty-one.

1-27-94 The district court filed an order compelling discovery. Among other things, the order directed plaintiffs to file by February 1, 1994, "full, fair and complete answers" to thirteen interrogatories, including interrogatory twenty-one. Plaintiffs were also ordered to produce all documents responsive to nineteen of defendants' requests for production.

2-1-94 Logan filed additional supplemental answers to defendants' first set of interrogatories. He supplemented his answer to interrogatory twenty-one by listing the amount of each investment he had made. He asserted his damages would be the difference between the amount of his investments and the distributions he had received plus the lost use of funds and an undetermined amount of punitive damages. While he listed the amount of each investment and estimated the amount of distributions he received, he did not provide a specific answer as to his total amount of damages or his damages resulting from each separate investment.

3-10-94 Defendants filed a motion for sanctions.

3-29-94 The district court granted the motion for sanctions and plaintiffs were ordered to "fully, fairly, completely and accurately answer Defendants' Interrogatories with respect to their claimed measure of damages."

5-17-94 The district court dismissed Wagner's companion case due to noncompliance with discovery orders.

5-18-94 Plaintiffs filed an additional supplemental response to interrogatory twenty-one. Plaintiffs reiterated their general claim to damages amounting to the difference between their investments and distributions plus pre-filing interest and punitive damages of at least $350,000.

5-26-94 Defendants filed a motion to dismiss plaintiffs' action or to limit plaintiffs' evidence as a discovery sanction. A hearing was held on the motion on June 9.

5-31-94 Plaintiffs filed another additional supplemental answer to the damages interrogatory. The answer was essentially the same as their response of May 18 except they added a claim for post-filing interest.

6-22-94 The district court dismissed plaintiffs' action.

II. Applicable Law. The legal standards by which we review a trial court's exercise of its discretion in imposing sanctions are well established. 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. We have long recognized discovery sanctions by a trial court are discretionary and will not be reversed unless there has been an abuse of discretion. *2049 Group, Ltd. v. Galt Sand Co.*, 526 N.W.2d 876, 878 (Iowa App. 1994). The range of discretion narrows, however, when a trial court selects dismissal of an action as a sanction. *Id.*

In order to justify dismissal of an action, the party's noncompliance must be due to willfulness, fault, or bad faith. *Id.* In the context of sanctions, an act is willful if it is intentional and deliberate and not the result of negligence or oversight. *See McQuillen v. City of Sioux City*, 306 N.W.2d 789, 791 (Iowa 1981).

The amount of damages sought by a plaintiff is discoverable. *Gordon v. Noel*, 356 N.W.2d 559, 564 (Iowa 1984). Plaintiffs attempt to excuse their failure to provide calculations of their damages by arguing they had already produced documents pertaining to the amount of their distributions and defendants could have used those to calculate plaintiffs' damages. This court has previously indicated a party's prior production of duplicative information does not excuse a failure to produce specifically requested discovery. *See Eaton v. Meester*, 464 N.W.2d 691, 694 (Iowa App. 1990).

Plaintiffs claimed to have been injured by eight separate investments. It was possible a determination could have been made that some of the claims were time barred, although we express no opinion on this issue. It is also possible the jury could have found some of the claims were not meritorious. In either case, separate calculations of damages would have been required for each separate investment. It was plaintiffs' responsibility to separately calculate the alleged damages resulting from each investment and to specify the documentation which supports each calculation. Likewise, it was plaintiffs' responsibility to specify when each investment was made and when their claims for pre-filing interest would begin to run.

Through the duration of this case, plaintiffs took the position they had furnished defendants with relevant documents and it was up to defendants to dig through them and ascertain their damages. We agree with the trial court's conclusion defendants should not be expected to "ferret out" plaintiffs' damages information and to speculate on the nature of plaintiffs' claims. It is reasonable to ask a party what their contentions are and what evidence they contend supports their claim. It is reasonable to ask a party to respond with completeness and specificity.

Plaintiffs did not provide timely or complete discovery responses. Despite two court orders, they failed to supplement their response to the damages interrogatory so as to provide defendants with specific meaningful calculations of the damages they would be requesting at trial. Only after the *Wagner* case was dismissed for similar discovery violations did plaintiffs appear to try to comply with the court's orders.

Due to plaintiffs' failure to provide precise damages information, defendants were unable to fully question plaintiffs and their expert about this issue during depositions. In fact, when deposed in February 1994, plaintiffs were vague when asked about their damages and claimed they had not yet determined what their damages were Defendants' trial preparation was hampered by these inadequate responses.

We recognize dismissal of a case is the severest sanction for discovery violations. However, the fact less drastic sanctions are available to the trail court does not require a finding the court abused its discretion. *Bindel v. Larrington, 543*

N.W.2d 912, 914 (Iowa App. 1993). Essential to plaintiffs' recovery at trial was their ability to prove their damages, and the amount of damages they sought was clearly discoverable. *See Gordon*, 356 N.W.2d at 564.

Trial in this case was scheduled for July 19, 1994, and even plaintiffs' belated attempts in May 1994 to supplement their interrogatory answer were insufficient to alleviate the prejudice to defendants. We find the trial court did not abuse its discretion when it found plaintiffs' repeated failure to provide adequate discovery responses was willful, intentional, and deliberate. Under these circumstances, we cannot find the trial court's discretion to dismiss the case was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *See Farley v. Ginther*, 450 N.W.2d 853, 856 (Iowa 1990). We affirm the dismissal of plaintiffs' case.

AFFIRMED.