

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

PLAINSMEN ENERGY, INC.,)
Plaintiff,)
v.) Case No. CIV-20-895-C
SK NEMAHA, LLC,)
Defendant.)

MEMORANDUM OPINION AND ORDER

Plaintiff filed two cases, each alleging the actions of Defendant damaged a well. In each case, Plaintiff's conduct since filing the action has been unacceptable. In each case, Defendant was forced to seek an Order from the Court compelling Plaintiff to provide discovery responses. Even more egregious is the fact that it has now become clear that Plaintiff assigned its interest in the allegedly damaged well to another party approximately two months after filing this action.

Defendant has filed a Motion for Sanctions, stating that Plaintiff has failed to respond to the Court's Order compelling it to provide discovery responses. Defendant has also filed a Motion for Attorney Fees in accordance with the Court's April 12, 2021, Order. In the Motion for Sanctions, Defendant notes that Fed. R. Civ. P. 37(b)(2)(A)(v) provides that the Court may dismiss an action for failure to comply with a discovery order. In accordance with that rule, Defendant requests the Court to dismiss the matter with prejudice. Plaintiff has not responded to Defendant's Motion.*

After considering Defendant's argument, the Court finds that dismissal with prejudice is inappropriate at this time. Plaintiff's conduct, while indefensible, did not prejudice Defendant to the extent necessary to warrant dismissal pursuant to Ehrenhaus v. Reynolds, 965 F.2d 916, 918 (10th Cir. 1992). Additionally, the Court finds that a lesser sanction is sufficient to address

Plaintiff's wrongdoing. As Defendant notes, it has been forced to expend costs and fees in an action that should never have been filed by the present party. Accordingly, the Court finds that dismissal of Plaintiff's case must occur with conditions. See Fed. R. Civ. P. 41(a)(2). Those conditions are that if Plaintiff refiles this action or any other action seeking to recover for the harm alleged herein, it must first pay the costs and attorneys' fees incurred by Defendant in this case.

In the Court's Order granting Defendant's Motion to Compel it awarded Defendant its attorneys' fees associated with bringing the Motion. In accordance with that Order, Defendant has now filed a Motion seeking \$660.00 in attorneys' fees. Again, Plaintiff has not responded to the Motion. Defendant's fee request will be granted.

As set forth more fully herein, Defendant SK Nemaha, LLC's Motion for Sanctions (Dkt. No. 15) is GRANTED in part. This matter is DISMISSED without prejudice by the Court and subject to the conditions outlined herein. Defendant SK Nemaha, LLC's Request for Attorney Fees (Dkt. No. 16) is GRANTED.

IT IS SO ORDERED this 9th day of June 2021.


ROBIN J. CAUTHRON
United States District Judge

* The other case is Plainsmen Energy, Inc. v. SK Nemaha, LLC, CIV-20-225. That case was dismissed by the Court on May 26, 2021 (Dkt. No. 30).