

RENDERED: March 6, 1998; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 96-CA-2470-MR

KEITH ALLAN BOOTHE

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JOHN WOODS POTTER, JUDGE  
ACTION NO. 93-CI-05595

KEY AUTO SALES; JEFFCO LEASING  
COMPANY, INC.; BARBARA A. WAGNER;  
NEC INSURANCE COMPANY, INC.; and  
CONNECTICUT SPECIALTY INSURANCE  
GROUP

APPELLEES

OPINION AFFIRMING

\* \* \* \* \*

BEFORE: ABRAMSON, DYCHE, and HUDDLESTON, Judges.

DYCHE, JUDGE. The Jefferson Circuit Court has dismissed appellant's complaint for his attorney's pattern of failure to abide by or comply with various court orders and other deadlines relating to discovery and general prosecution of appellant's claims against appellees. On appeal, appellant does not deny the conduct which has precipitated the trial court's action, but charges that the dismissal is an abuse of the trial court's discretion.

We quote the trial court's order for a summary of appellant's counsel's conduct leading to the dismissal:

This action grows out of a November, 1991, accident and was filed against six defendants just before the statute of limitation expired in November, 1993. Because the Complaint failed to mention that defendant, except in the caption. Two defendants were dismissed in December, 1993. A third was dismissed in February, 1994 for failure to state a claim.

Except serving one a set of Interrogatories, the plaintiff took no further action until February, 1996, when in response to the defendant's motion to dismiss for failure to prosecute, the plaintiff moved for a trial date. A Pretrial was held April 16, and the case was set for trial July 10, 1996. At the Pretrial, the plaintiff was ordered to respond to all outstanding discovery in fifteen (15) days.

On May 6, 1996, the defendant made a Motion to Compel the plaintiff to respond to the discovery, as had been ordered previously. The plaintiff tendered incomplete answers on May 6, and was ordered to make a complete response by May 13, 1996.

On May 20, 1996, the defendant made a Motion to Dismiss for the plaintiff's failure to comply with either of the previous orders. This motion was heard June 19, 1996. At that time the defendant [sic plaintiff] was ordered to pay the defendant \$500.00 to reimburse it for expenses and fully comply with outstanding discovery.

On July 1, 1996, the defendant again moved to dismiss the complaint for the plaintiff's failure to provide adequate discovery. Plaintiff did not appear.

We have examined the entire record below under the standards set out in Greathouse v. American National Bank and Trust Company, Ky. App., 796 S.W.2d 868 (1990). The trial court's order makes an implicit finding of a conscious and intentional failure to comply with the provisions of the Rules of Civil Procedure and the orders of the trial court. That finding is not erroneous.

The trial court had considered, and imposed, lesser sanctions for earlier violations, but had been unable to obtain compliance by appellant's counsel. Appellees were prejudiced in their trial preparation by appellant's failure to provide the requested and required discovery. In short, we find no abuse of the trial court's discretion. Indeed, this matter could have been dismissed in February, 1996, for failure to prosecute. CR 77.02(2).

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT

William L. Neichter  
Louisville, Kentucky

BRIEF FOR APPELLEES  
JEFFCO LEASING COMPANY, INC.,  
and BARBARA A. WAGNER

Robert J. Beale  
Louisville, Kentucky