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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0213**

Harry Clark,
Appellant,

vs.

Thomas Fontana,
Respondent.

**Filed December 9, 2008
Reversed and remanded
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-07-7132

William L. Walker, Jr., Karlowba R. Powell, Walker Law Offices, P.A., 3112 Hennepin Avenue South, Minneapolis, MN 55408 (for appellant)

Mark L. Pfister, Andrea E. Reisbord, Cousineau McGuire Chartered, 1550 Utica Avenue South, Suite 600, Minneapolis, MN 55416 (for respondent)

Considered and decided by Hudson, Presiding Judge; Bjorkman, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the district court's dismissal of his personal-injury action with prejudice as a sanction for violating the scheduling order. Appellant also challenges the district court's subsequent imposition of a monetary sanction against appellant's attorney as a condition of granting appellant relief from the judgment. We reverse and remand for trial.

FACTS

In early 2007, appellant Harry Clark initiated a personal-injury action against respondent Thomas Fontana. The district court issued a scheduling order setting the case “for a Week Certain jury trial beginning on October 29, 2007.” (Emphasis omitted.) The order directed the parties to complete various pretrial procedures “no later than 15 days before the trial date.” (Emphasis omitted.) These procedures included exchanging copies of all exhibits; filing original exhibit lists with the district court; and serving and filing witness lists identifying the names and addresses of all witnesses whom the parties intended to call to testify.

Clark served and filed his witness list by mail on October 15, 2007. Fontana and the district court administrator received it on October 17. Clark identified six witnesses—himself, two of his family members, two medical providers, and an unnamed person identified as “Grade School Teacher who witnessed the accident.” Clark did not provide the district court a courtesy copy of his witness list. He did not file or serve an exhibit list.

Fontana filed a motion in limine on October 24, 2007, requesting that the district court exclude (1) the testimony of or any reference to the “Grade School Teacher,” and (2) all of Clark’s exhibits. During the hearing on October 29, 2007, the scheduled trial date, Fontana asked the district court to dismiss the case in its entirety based on Clark’s failure to comply with the scheduling order. The district court granted Fontana’s motion and denied Clark’s requests for a continuance or a dismissal without prejudice. In its written order, the district court stated that Clark was precluded from offering any evidence except his own testimony and, because these sanctions resulted in Clark being unable to prove his case, the case was dismissed with prejudice.¹

Clark requested relief pursuant to Minn. R. Civ. P. 60.02. Fontana advised the district court of authority suggesting that when an attorney is responsible for a party’s failure to comply with procedural requirements, rule 41.02(a) does not permit dismissal of an action with prejudice but, rather, authorizes the court to penalize the attorney. Characterizing Fontana’s argument as “[t]he most persuasive,” the district court agreed to vacate the judgment of dismissal upon payment of a monetary sanction. The district court ordered Fontana’s counsel to submit all of his billing statements for in camera review. After reviewing the statements, the district court ordered Clark’s counsel to pay a sanction in the amount of \$10,000 to Fontana. This amount represented all of the attorney fees Fontana had incurred in defending the case up to the time of trial and in responding to Clark’s rule 60.02 motion. The district court also ordered that “[i]f full

¹ Clark could not prove his personal-injury claim without expert testimony with respect to his injuries and causation.

payment is not made by January 25 at noon, the dismissal will not be vacated.” Clark’s counsel did not pay the sanction. This appeal follows.

D E C I S I O N

I. The judgment of dismissal

Clark challenges the district court’s dismissal of his case with prejudice, arguing that (1) sanctions were unwarranted because he complied with the scheduling order and, to the extent he did not, any failure was excusable neglect; and (2) the district court abused its discretion by imposing the sanction of dismissal with prejudice. We address each argument in turn.

A.

Clark first contends that he did not violate the scheduling order because his witness list was timely under Minn. R. Civ. P. 6.01. This argument is unavailing. First, rule 6.01 does not apply to the timeline for compliance with a district court’s scheduling order. Clark’s witness and exhibit lists are not responsive pleadings or motion papers. They were due 15 days before trial pursuant to the district court’s scheduling order that “control[s] the subsequent course of the action.” Minn. R. Civ. P. 16.05. Scheduling orders are important because a party’s failure to comply with their precise terms not only causes potential prejudice to the opposing party but also compromises the district court’s ability to manage its docket and prepare for trial. Clark’s failure to submit his witness list 15 days prior to trial in accordance with the scheduling order means that it was untimely.

Second, even if Clark had timely served and filed his witness list, he still violated the clear terms of the scheduling order. Clark’s witness list did not contain the requisite

information because it lacked addresses for each witness and provided neither name nor address for the “Grade School Teacher.” Clark never filed or served an exhibit list. The record fully supports the district court’s finding that Clark violated the scheduling order.

Clark contends that any such violations were excusable under the law and the district court should have afforded him an opportunity to comply rather than imposing sanctions. A district court may extend the deadlines for completion of an act, “upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.” Minn. R. Civ. P. 6.02; *see also Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006) (applying the excusable-neglect provision in rule 6.02 to the question of appellant’s compliance with a scheduling order). Neglect is not excusable unless (1) there is a reasonable defense on the merits, (2) there is a reasonable excuse for the failure to perform the required action, (3) the party seeking relief acted with due diligence after notice of the entry of judgment, and (4) no substantial prejudice results to the other party. *See Mercer*, 715 N.W.2d at 123.

The district court rejected Clark’s argument, emphasizing counsel’s lack of excuse for failing to comply with court orders and procedural rules dating back to the initiation of the litigation. The district court characterized counsel’s failure to comply with the scheduling order as “blatantly disobey[ing] an Order of this Court” and “affirmative defiance of the clear terms of the Scheduling Order, . . . reflect[ing] a lack of professional integrity and a lack of respect for [Clark] and the Court.” While acknowledging that “[l]ack of prejudice to the defense is not a serious issue here,” the district court emphasized the significance of compliance with scheduling order requirements to the

effective and efficient management of its docket. In particular, the district court cited the impact rescheduling of the trial in this case would have on other pending cases. The district court did not err in rejecting Clark's excusable-neglect argument.

We recognize the district court's inherent authority to manage individual cases and do not doubt that Clark's failure to comply with the scheduling order interfered with the district court's ability to do so here. The district court was authorized to enforce its scheduling order, modify its terms, and impose appropriate sanctions for its violation. Minn. R. Civ. P. 16.01. Clark violated the scheduling order and cannot show that all four elements of excusable neglect are present. Accordingly, the district court did not abuse its discretion by finding a sanction was warranted.²

B.

The heart of Clark's argument is that the district court abused its discretion in imposing the sanction of dismissal of his case with prejudice as a consequence of Clark's failure to comply with the scheduling order. But the record shows the district court did not do so. Rather, the district court imposed a sanction that precluded Clark from presenting any exhibits or calling any witnesses other than himself. With only his own testimony, and in the absence of medical evidence, Clark was unable to prove his case. The district court dismissed it on that basis.

² Clark also argues that the district court should not have imposed sanctions because the language of the scheduling order is ambiguous. But Clark concedes that the provisions of the scheduling order with which he failed to comply are not ambiguous. Accordingly, this argument fails.

If a district court imposes sanctions that prevent a party from being able to prove a claim, the resulting dismissal does not make the sanction itself unreasonable. *See Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995) (recognizing that when the only sanction imposed is an evidence-preclusion sanction, dismissal is not itself a sanction, but only the inevitable consequence of the plaintiff's inability, without the necessary evidence, to prove his case). However, resolution of cases on their merits is strongly favored. *Firoved v. General Motors Corp.*, 277 Minn. 278, 283, 152 N.W.2d 364, 368 (1967). "Since a dismissal with prejudice operates as an adjudication on the merits, it is the most punitive sanction which can be imposed for noncompliance with the rules or order of the court or for failure to prosecute. It should therefore be granted only under exceptional circumstances." *Id.* Consequently, we review the district court's imposition of evidence-preclusion sanctions in light of the resulting dismissal.

"One challenging the [district] court's choice of a sanction has the difficult burden of convincing an appellate court that the [district] court abused its discretion" *Patton*, 538 N.W.2d at 119. A district court abuses its discretion when it imposes sanctions that no reasonable person would agree were appropriate. *Id.*

A district court is "vested with considerable inherent judicial authority necessary to [its] vital function." *Id.* at 118 (quotation omitted). When a party violates a scheduling order, Minn. R. Civ. P. 16.06 authorizes the imposition of a range of sanctions. "If a party or party's attorney fails to obey a scheduling or pretrial order, . . . the court, upon motion or upon its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37.02(b)(2), (3), (4)."

Minn. R. Civ. P. 16.06. Rule 37.02 also authorizes the use of sanctions for discovery violations, including precluding a disobedient party from “support[ing] or oppos[ing] designated claims or defenses,” or precluding “that party from introducing designated matters in evidence.” Minn. R. Civ. P. 37.02(b)(2).

Here, the scheduling order specifically warned of possible sanctions for noncompliance in language that mirrors the provisions of rule 37.02. The district court’s decision to limit Clark’s presentation of evidence was consistent with the scheduling order’s terms and well within its authority under rules 16.06 and 37.02. The issue we must decide is whether the district court abused its discretion by precluding virtually all of Clark’s evidence as a result of counsel’s violations of the scheduling order.

Clark’s witness list did not include addresses for any of the listed witnesses as the scheduling order mandated. However, the record reveals that the parties had been exchanging information through discovery for months, Fontana had medical records and written reports from the listed expert witnesses, and both parties were prepared for trial on October 29, 2007. Both Fontana and the district court acknowledge that there is little or no evidence that Fontana was prejudiced by Clark’s noncompliance. By contrast, the sanction that the district court imposed made it impossible for Clark to proceed with and prove his case. When viewed in light of the resulting dismissal, the district court’s decision to preclude evidence of which Fontana was amply aware is disproportionate to Clark’s attorney’s technical failure to comply with the scheduling order. *See Firoved*, 277 Minn. at 284, 152 N.W.2d at 369 (emphasizing that despite district court’s discretion to enforce rules and plan its calendar, “the policy which seeks to dispose of litigation on

the merits rather than procedural grounds is, except in extraordinary circumstances, of overriding importance”). Indeed, the district court recognized this by conditionally granting a new trial. Under the circumstances, the district court abused its discretion in precluding evidence to such an extent that dismissal resulted.

II. The monetary sanction

We turn now to the issue of whether the substituted monetary sanction falls within the district court’s discretion. We recognize and respect the district court’s broad inherent authority to fashion appropriate sanctions for violations of its orders. *Patton*, 538 N.W.2d at 118-19. We will affirm unless the district court imposed sanctions that no reasonable person would agree were appropriate. *Id.* at 119.

Unquestionably, the district court was authorized to award attorney fees “[i]n lieu of or in addition to any other [reasonable] sanction” for Clark’s violation of the scheduling order and other procedural deficiencies. Minn. R. Civ. P. 16.06; *see also Firoved*, 277 Minn. at 283, 152 N.W.2d at 368. And while we do not substitute our judgment for that of the district court in determining the amount of monetary sanctions, we conclude, based on the singular facts here, that the district court’s award exceeds what is reasonably appropriate.

The undisputed record shows Clark’s failure to comply with the scheduling order did not prejudice Fontana in any meaningful sense. The parties had stipulated to the potential trial exhibits and Fontana had substantive information as to all but one of Clark’s proposed witnesses. While rescheduling the trial will likely require Fontana’s counsel to duplicate some trial preparation tasks, counsel will not have to start over

entirely. Yet the record reflects, and Fontana's counsel candidly acknowledges, the \$10,000 sanction constituted the full amount of attorney fees Fontana incurred since the beginning of the case. This amount bears no rational relationship to the extent of Clark's violation and reimbursement of all the attorney fees Fontana has expended greatly exceeds any prejudice Fontana can claim as a result of delaying the trial. While scheduling orders are important to the efficient and effective operation of the district courts, the disruption occasioned by Clark's violation here is minor when compared to a monetary sanction so substantial that it effectively prevented Clark from proceeding with his case. The district court's award of 100% of Fontana's defense costs as a sanction exceeds what a reasonable person would consider appropriate.

Although we believe the unique facts and procedural posture of this case make an award of the entire \$10,000 an abuse of discretion, we do not suggest that an award of monetary sanctions is unwarranted. On remand, we note the district court has discretion to order sanctions short of what it imposed in the past. Accordingly, we reverse and remand for trial.

Reversed and remanded.