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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-309

Filed 16 April 2024

Vance County, No. 19CVS1102

KAREN JEAN SINGLETON, Plaintiff,

v.

DAVID CLINTON MCNABB, M.D. and RALEIGH ORTHOPAEDIC CLINIC, P.A.,  
Defendants.

Appeal by Plaintiff from Orders entered 8 September 2021 and 18 October 2022 by Judge Alyson A. Grine in Vance County Superior Court. Heard in the Court of Appeals 31 October 2023.

*Anderson, Johnson, Lawrence & Butler, L.L.P., by Steven C. Lawrence, for Plaintiff-Appellant.*

*Walker, Allen, Grice, Ammons, Foy, Klick & McCullough, LLP, by Elizabeth P. McCullough and Jake R. Garris, for Defendants-Appellees.*

HAMPSON, Judge.

**Factual and Procedural Background**

Karen Jean Singleton (Plaintiff) appeals from an Order Imposing Discovery Sanctions and an Order on Fees and Costs for Discovery Violations. This is Plaintiff's second appeal from the imposition of sanctions against her. We dismissed the first

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appeal as an interlocutory appeal not affecting a substantial right. *Singleton v. McNabb*, 871 S.E.2d 880, 2022 WL 1553557 (N.C. Ct. App. 2022) (unpublished). The Record before us, including our prior decision, tends to reflect the following:

On 14 February 2020, following the entry of an Order extending the statute of limitations, Plaintiff filed a Complaint alleging medical negligence against David Clinton McNabb, M.D. and Raleigh Orthopaedic Clinic, P.A. (collectively Defendants). The Complaint alleges Dr. McNabb failed to perform adequate leg length analysis and measurements of Plaintiff's right leg before Dr. McNabb performed a total replacement of Plaintiff's right hip. Dr. McNabb's alleged error resulted in him making Plaintiff's leg too long, which required him to repair the leg length during surgery and resulted in damage to the femoral and sciatic nerve. Following surgery, Plaintiff experienced a total lack of feeling in her right leg for a period, lack of feeling and function in the lower right leg for many months, and excruciating pain and spasms in her hip area and throughout her right leg. Plaintiff required substantial physical therapy and use of a wheelchair. Defendants filed an Answer on 2 June 2020, denying negligence and liability and asserting numerous defenses.

On 11 March 2021, the trial court entered a Second Amended Consent Discovery Scheduling Order pursuant to Rule 26(f1) of the North Carolina Rules of Civil Procedure. The Scheduling Order, among other things, ordered that Plaintiff shall provide medical records requested by Defendants in written discovery on or

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before 15 March 2021. The Scheduling Order provided that Plaintiff could request Dr. McNabb's deposition after Plaintiff produced the required medical records.

Dr. McNabb's deposition was scheduled for 11 June 2021. Defendants allege, among other things, that during the deposition Plaintiff produced x-rays which had not been produced before. Plaintiff claimed these x-rays were of her leg and contained marking and notes for purpose of measurement made by Dr. McNabb. Once these x-rays were produced, defense counsel stopped the deposition, went to a separate room to consult with Dr. McNabb, and terminated the deposition.

Following the deposition, Defendants filed a Motion for Sanctions and Motion to Dismiss. On 17 August 2021, Plaintiff filed a Motion to Compel and Response to Defendants' Motion and Amended Motion for Sanctions and Motion to Dismiss. Plaintiff asked the trial court to compel Dr. McNabb to complete his deposition.

The Motions came on for hearing on 18 August 2021. Following the hearing, the trial court entered an Order on 8 September 2021 imposing sanctions for violations of discovery orders pursuant to North Carolina Rule of Civil Procedure 37(b)(2), assessing costs and attorney fees against Plaintiff, compelling Plaintiff to produce certain discovery materials, and denying Defendants' Motion to Dismiss. This Order, however, did not specify the amount of fees or costs assessed against Plaintiff. Plaintiff filed Notice of Appeal on 5 October 2021. Our Court issued its Opinion dismissing this interlocutory appeal on 17 May 2022. *Singleton*, 871 S.E.2d at \*3.

Subsequently, on 18 October 2022, the trial court entered its Order on Attorney's Fees and Costs for Discovery Violations. The trial court assessed a total amount of attorney fees against Plaintiff of \$11,147.75 and costs of \$505.65. The trial court ordered these fees paid within thirty days of a final judgment in this case. On 10 November 2022, Plaintiff filed Notice of Appeal from both the 8 September 2021 Order Imposing Discovery Sanctions and the 18 October 2022 Order on Attorney's Fees and Costs for Discovery Violations.

### **Appellate Jurisdiction**

Plaintiff acknowledges her appeal is interlocutory and that interlocutory orders are generally not appealable. Plaintiff offers several disjointed, unsupported, and ineffectual arguments for immediate review of the trial court's orders. These include a new claim of judicial bias, potential conflicts in subsequent orders, the amount of the sanctions imposed, and the trial court not holding a separate hearing before requiring her to submit private journals to in camera review by a judge as part of the discovery process.

Nevertheless, we note our Court has previously undertaken to review discovery orders that are enforced by sanctions under N.C.R. Civ. P. 37.

Generally, discovery orders, including orders compelling production, are not immediately appealable. *Sharpe v. Worland*, 351 N.C. 159, 163, 522 S.E.2d 577, 579 (1999). However, "when [a discovery] order is enforced by sanctions pursuant to ... Rule 37(b), the order is appealable," *Walker v. Liberty Mut. Ins. Co.*, 84 N.C. App. 552, 554, 353 S.E.2d 425, 426 (1987), and the appeal tests

the validity of both the discovery order and the sanctions imposed, *Benfield v. Benfield*, 89 N.C. App. 415, 420, 366 S.E.2d 500, 503 (1988).

*In re Pedestrian Walkway Failure*, 173 N.C. App. 254, 262, 618 S.E.2d 796, 802 (2005).

We acknowledge Defendants' argument that to constitute an appealable discovery sanctions order imposing monetary sanctions, the order should require payment of a substantial sum of money and require payment immediately. *See Porters Neck Ltd., LLC v. Porters Neck Country Club, Inc.*, 276 N.C. App. 95, 99, 855 S.E.2d 819, 824 (2022). Here, the sanction totals less than \$12,000 and is not payable until after final judgment. The Orders in this case, however, do not just require monetary sanctions but also include requirements for Plaintiff to provide additional documents and discovery responses.

For purposes of this case, we conclude that, broadly speaking, the trial court's Orders imposing sanctions for discovery violations and compelling Plaintiff to provide further discovery are immediately appealable. As such, this Court has jurisdiction to review the interlocutory orders.

**Issue**

The dispositive issue in this case is whether the trial court abused its discretion in entering the Order Imposing Discovery Sanctions and the Order on Attorney’s Fees and Costs for Discovery Violations.<sup>1</sup>

**Analysis**

Plaintiff contends the trial court erred in imposing sanctions for discovery violations under Rule 37(b) of the North Carolina Rules of Civil Procedure for violations of discovery scheduling orders. Rule 37(b) provides in relevant part: “if a party fails to obey an order entered under Rule 26(f) a judge of the court in which the action is pending may make such orders in regard to the failure as are just[.]” N.C. Gen. Stat. § 1A-1, Rule 37(b)(2) (2021).

“[T]rial courts are vested with broad discretion in ordering sanctions under Rule 37(b).” *GEA, Inc. v. Luxury Auctions Mktg., Inc.*, 259 N.C. App. 443, 452, 817 S.E.2d 422, 429-30 (2018). “Not only is the decision to impose Rule 37(b) sanctions within the sound discretion of the trial court, but so too is the choice of Rule 37(b) sanctions to impose.” *Id.* “This Court will not overturn a trial court’s imposition of sanctions under Rule 37(b) absent a showing of abuse of that discretion.” *Id.* “A trial court may be reversed for abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision.” *Id.*

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<sup>1</sup> Plaintiff also raises an argument that the trial court failed to rule on Plaintiff’s own motions to compel and for sanctions. That argument is not properly before us. *See* N.C.R. App. P. 10(a).

(quoting *Hursey v. Homes by Design, Inc.*, 121 N.C. App. 175, 177, 464 S.E.2d 504, 505 (1995)). “An abuse of discretion may arise if there is no record evidence which indicates that [a] defendant acted improperly, or if the law will not support the conclusion that a discovery violation has occurred.” *In re Pedestrian Walkway Failure*, 173 N.C. App. at 264, 618 S.E.2d at 803 (citations omitted).

On appeal, in sum, Plaintiff contends it could not have been a discovery violation to not produce medical records to Defendants—the x-rays—that Dr. McNabb had allegedly made. Plaintiff’s arguments largely consist of efforts to re-argue her position and general disagreement with the trial court’s order. Plaintiff offers little in the way of record support for her position. Plaintiff also does not specifically challenge the trial court’s findings of fact as unsupported by the evidence. Further, Plaintiff offers no case law specifically supporting her position that the trial court erred in imposing sanctions for a discovery violation. Finally, Plaintiff also does not contest the actual sanctions imposed.

Thus, Plaintiff has failed to show the trial court erred in concluding Plaintiff violated the discovery orders in this case. Therefore, the trial court did not abuse its discretion in imposing sanctions for discovery violations under Rule 37(b). Consequently, the trial court properly entered orders imposing monetary sanctions and compelling further discovery from Plaintiff.

**Conclusion**

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Accordingly, for the foregoing reasons, we affirm the trial court's Order Imposing Discovery Sanctions and the Order on Attorney's Fees and Costs for Discovery Violations.

AFFIRMED.

Judges GORE and STADING concur.

Report per Rule 30(e).