

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arlene Schopfer,	:	
	:	
Appellant	:	
	:	
v.	:	No. 631 C.D. 2010
	:	
Township of Ridley and Stephen	:	Submitted: August 27, 2010
M. Burke	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: November 5, 2010

Arlene Schopfer (Ms. Schopfer) appeals from the November 13, 2009, order of the Court of Common Pleas of Delaware County (trial court) that granted the Motion for Sanctions Against Ms. Schopfer for Failure to Respond to Discovery Request and Comply with a Court Order (Motion for Sanctions) filed by the Township of Ridley (Township) and Stephen M. Burke (Mr. Burke) (together, Defendants). The trial court, in relevant part, dismissed Ms. Schopfer’s Civil Action Complaint (Complaint) against Defendants in its entirety.¹ On appeal, Ms. Schopfer asserts that the trial

¹ In addition to requesting the dismissal of the Complaint in their Motion for Sanctions, Defendants also requested the trial court to preclude Ms. Schopfer from testifying and from presenting or using any evidence, whether documentary or testimonial, if there was to be a trial, and
(Continued...)

court abused its discretion in dismissing her Complaint in its entirety because: (1) she complied with the discovery request before the trial court issued its November 13, 2009, Order; (2) Defendants failed to establish that they were prejudiced by the discovery violations; and (3) the dismissal of the Complaint was an inappropriate sanction for the discovery violation at issue here. We affirm.

This matter arises out of a motor vehicle accident between Ms. Schopfer and Mr. Burke, a Township employee, who was operating a Township-owned vehicle at the time of the accident. On February 17, 2009, Ms. Schopfer filed a Praecipe to Issue a Writ of Summons against Defendants, which was issued on February 19, 2009. (Praecipe to Issue a Writ of Summons, February 17, 2009, Item 1.) Defendants filed a Rule to File Complaint on March 17, 2009, demanding that Ms. Schopfer file a complaint within twenty days or suffer judgment of non pros. (Rule to File Complaint, March 17, 2009, Item 2.) Ms. Schopfer filed the Complaint on April 8, 2009.

On March 23, 2009, Defendants served Ms. Schopfer with various discovery requests, including requests for interrogatories, expert interrogatories, and the production of documents. Receiving no response from Ms. Schopfer, Defendants sent her a letter, dated May 11, 2009, requesting full and complete responses to their discovery requests. Defendants wrote Ms. Schopfer on May 26, 2009, again requesting full and complete responses to Defendants' requests. Each letter advised

to order Ms. Schopfer to pay Defendants' attorney's fees related to the Motion for Sanctions. The trial court granted Defendants' first request but did not order Ms. Schopfer to pay any fees.

that, if discovery was not forthcoming, a Motion to Compel would be filed. Neither Ms. Schopfer nor her counsel responded to either letter.²

Receiving no responses to their letters, Defendants filed with the trial court a Motion to Compel Ms. Schopfer's Discovery Responses (Motion to Compel) on June 4, 2009. On July 17, 2009,³ the trial court granted the Motion to Compel and ordered Ms. Schopfer to respond, without objection, to Defendants' discovery requests within ten days or suffer appropriate sanctions upon further motion. (Trial Ct. Order, July 17, 2009, R.R. at 58a.) Despite the order from the trial court, Ms. Schopfer did not respond to Defendants' discovery requests, and Defendants filed the Motion for Sanctions on September 15, 2009. In the Motion for Sanctions and accompanying Memorandum of Law, Defendants described: their repeated discovery requests; Ms. Schopfer's failure to comply with Defendants' requests and the trial court's July 17,

² Defendants also filed Preliminary Objections to the Complaint on April 28, 2009, alleging that the Township enjoyed governmental immunity and that the averment found at Paragraph 13(g) against Mr. Burke lacked specificity. (Preliminary Objections to Complaint ¶¶ 3, 7, 9, April 28, 2009, R.R. at 96a-97a.) These Preliminary Objections went unanswered and, on June 16, 2009, the trial court sustained the Preliminary Objections, struck the Complaint, but gave Ms. Schopfer twenty days to file an amended complaint. (Trial Ct. Order, June 16, 2009, R.R. at 82a.) Ms. Schopfer filed an Amended Complaint on July 9, 2009, to which Defendants filed Preliminary Objections on July 27, 2009, asserting the same objections. (Preliminary Objections to the Amended Complaint ¶¶ 3, 6, 9, July 27, 2009, R.R. at 68a-69a.) Defendants' Preliminary Objections again went unanswered and, on September 18, 2009, the trial court dismissed the count against the Township, struck Paragraph 13(g) from the count against Mr. Burke, and gave Ms. Schopfer twenty days to file an amended complaint. (Trial Ct. Order, September 18, 2009, R.R. at 29a.) Ms. Schopfer filed a Second Amended Complaint on October 9, 2009. Defendants filed a Response with New Matter to the Second Amended Complaint on October 22, 2009. (Response to Ms. Schopfer's Second Amended Complaint with New Matter, October 22, 2009, Item 19.)

³ In their brief, Defendants refer to this Order as being entered on July 18, 2009; however, the Order indicates that it was entered on July 17, 2009. (Trial Ct. Order, July 17, 2009, R.R. at 58a.)

2009, Order, or to file answers to any of Defendants' preliminary objections; and Ms. Schopfer's failure to contact Defendants to obtain an extension or otherwise explain the unreasonable delay in providing responses to the discovery requests. (Motion for Sanctions and Memorandum of Law in Support of Motion for Sanctions, September 15, 2009, R.R. at 32a-39a.) Ms. Schopfer filed no response to the Motion for Sanctions. Instead, she sent answers to Defendants' interrogatories, along with documents requested in Defendants' request for documents, to Defendants' counsel by first class mail on October 15, 2009.⁴ (Ms. Schopfer's Br. at 5.) Defendants dispute that Ms. Schopfer answered their request to produce documents and assert that Ms. Schopfer has never answered the expert interrogatories request. (Defendants' Br. at 3, 5.)

On November 13, 2009, the trial court granted the Motion for Sanctions, dismissed the Complaint with prejudice, and precluded Ms. Schopfer from testifying at trial or presenting or using any evidence at trial. The trial court relied on Pennsylvania Rule of Civil Procedure (Pa. R.C.P.) No. 4019, which, in pertinent part, states:

- (a)(1) The court may, on motion, make an appropriate order if
 - (i) a party fails to serve answers, sufficient answers or objections to written interrogatories under Rule [No.] 4005;

....

- (c) The court, when acting under subdivision (a) of this rule, may make

⁴ A copy of Ms. Schopfer's interrogatory answers is found in the reproduced record. (Ms. Schopfer's Answers to Interrogatories of Defendants Directed to Ms. Schopfer, R.R. at 2a-22a.) Although this document is not contained in the certified record to this Court, Defendants do not object to its inclusion in the reproduced record.

....

- (2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition;
- (3) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or entering a judgment of non pros or by default against the disobedient party or party advising the disobedience.

Pa. R.C.P. No. 4019. The trial court held that Ms. Schopfer should be sanctioned for her conduct in this matter where: Defendants requested Ms. Schopfer's responses to their discovery requests three times, to no avail; Ms. Schopfer ignored the trial court's Order of July 17, 2009, directing her to provide full and complete responses within ten days; and Defendants finally filed the Motion for Sanctions, to which Ms. Schopfer filed no responsive pleading. (Trial Ct. Op. at 2-3.) Ms. Schopfer now appeals to this Court.⁵

On appeal,⁶ Ms. Schopfer first argues that the trial court erred in dismissing the Complaint because she ultimately complied with the discovery requests in October 2009, before the trial court issued its Order dismissing the Complaint. However, Ms. Schopfer does not indicate that she provided answers to Defendants' expert interrogatories, and she offers no explanation for the delay in responding to Defendants' discovery requests or for not complying with the trial court's July 17,

⁵ Ms. Schopfer initially filed her appeal with the Superior Court, which transferred the matter to this Court.

⁶ "This Court's scope of review is to determine whether the trial court abused its discretion or committed an error of law or whether the findings of fact are supported by competent evidence." Appeal of Nordhoy, 547 A.2d 867, 868 (Pa. Cmwlth. 1988).

2009, Order. Defendants acknowledge that Ms. Schopfer “provided brief responses” to their interrogatories, but point out that she did not do so until after the deadline set forth in the July 17, 2009, Order and that she has not provided any responses to Defendants’ expert interrogatories or request for production of documents. (Defendants’ Br. at 3, 5.) Thus, according to Defendants, Ms. Schopfer has yet to fully comply with the July 17, 2009, Order, and the trial court’s sanctions in this matter were proper.

“The purpose of [Pa. R.C.P. No.] 4019 is to ensure compliance with proper orders of court, and adequate and prompt discovery of matters allowed by the rules of civil procedure.” Poulos v. Department of Transportation, 575 A.2d 967, 969 (Pa. Cmwlth. 1990). The imposition of specific sanctions pursuant to Pa. R.C.P. No. 4019 is within the sound discretion of the trial court. Appeal of Nordhoy, 547 A.2d 867, 869 (Pa. Cmwlth. 1988). “A judgment by default may be entered against a disobedient party as a sanction for failure to respond adequately to discovery requests.” Taylor v. City of Philadelphia, 692 A.2d 308, 314 n.8 (Pa. Cmwlth. 1997). In imposing sanctions under Pa. R.C.P. No. 4019, “[t]he trial court is required to strike a balance between the procedural need to move the case to a prompt disposition and the substantive rights of the parties.” Poulos, 575 A.2d at 969. The entry of a judgment of non pros is proper when a party to the proceeding has shown: (1) “a want of due diligence in failing to proceed with reasonable promptitude[;] [(2)] there has been no compelling reason for the delay[;] and [(3)] the delay has caused some prejudice to the adverse party.” Id. “Sanctions are not customarily imposed absent willful disregard, disobedience of a court order, or an obligation expressly set forth in the Pennsylvania Rules of Civil Procedure.” Nordhoy, 547 A.2d at 869.

We reject Ms. Schopfer's contention that her partial compliance with the discovery requests in this matter rendered the trial court's dismissal of the Complaint an abuse of discretion. First, Ms. Schopfer's answers to Defendants' interrogatories were sent to Defendants on or about October 15, 2009, eighty days after the deadline set forth in the trial court's July 17, 2009, Order. We decline to allow a party to ignore discovery deadlines set forth by a trial court without suffering any adverse consequences. To do so would contradict the purpose of Pa. R.C.P. No. 4019 to ensure compliance with court orders and discovery requests. Poulos, 575 A.2d at 969. Second, as Defendants point out, Ms. Schopfer has yet to provide responses to the expert interrogatories served on her on March 23, 2009. Thus, she still has not **fully** complied with the July 17, 2009, Order. Third, this Court has upheld the entry of judgment of non pros even where plaintiffs have submitted timely, but insufficient, answers to discovery. Poulos, 575 A.2d at 969-70 (entry of judgment of non pros was proper where the plaintiff timely submitted answers to interrogatories but the answers were deemed to be insufficient and consisted of "circuitous explanation[s]" as to why the plaintiff could not answer the defendant's interrogatories); Taylor, 692 A.2d at 311, 313-14 (holding that trial court acted within its authority of entering a default judgment against a defendant where defendant failed to fully respond to interrogatories, produce documents, or comply with orders from the discovery judge). Thus, the fact that Ms. Schopfer eventually complied with some of Defendants' discovery requests and the July, 17, 2009, Order, did not render the trial court's dismissal an abuse of its discretion.

Ms. Schopfer next argues that Defendants have not established that they were prejudiced by the delay and that the dismissal of the Complaint with prejudice was too harsh a sanction for the discovery violations involved here. We disagree.

As indicated above, judgment of non pros is appropriate where: (1) there is a want of due diligence in failing to proceed with reasonable promptness; (2) there is no compelling reason for the delay; and (3) the delay has caused some prejudice to the adverse party. Poulos, 575 A.2d at 969. The record clearly demonstrates that there was, and is, a want of due diligence on Ms. Schopfer's part. Defendants made repeated requests for discovery, to no avail, from March 23, 2009, through the present, at least with regard to Defendants' expert interrogatories. Ms. Schopfer did not timely comply with the trial court's July 17, 2009, Order requiring that she submit, **without objection**, her responses to **all** of Defendants' discovery requests **within ten days** of the order, which was July 27, 2009. Ms. Schopfer provided no responses until October 15, 2009, at which time she gave only a partial response. In addition, Ms. Schopfer filed no responsive pleadings to either the Motion to Compel or the Motion for Sanctions. The record, as well as Ms. Schopfer's brief to this Court, further reveals that Ms. Schopfer offers no explanation for the delay in her responses. Absent an explanation, Ms. Schopfer has not established a compelling reason for her delay in complying with Defendants' discovery requests and the July 17, 2009, Order.

Finally, although the trial court did not make a specific finding with respect to the prejudice Defendants have suffered as a result of Ms. Schopfer's continued failure to comply with Defendants' discovery requests and the trial court's Order of July 17,

2009, we are satisfied that the trial court's opinion adequately reflects consideration of the prejudice factor by describing Defendants' unsuccessful efforts to move this matter forward, without any assistance of Ms. Schopfer, who is, after all, the plaintiff in this matter. As Defendants indicated in their Memorandum of Law in support of the Motion for Sanctions, at each stage of the proceedings, Ms. Schopfer has failed to provide answers or responses, whether in the form of responses to interrogatories and discovery requests, or answers to Defendants' Preliminary Objections, the Motion to Compel, or the Motion for Sanctions. This has forced Defendants repeatedly to file documents with the trial court, all in an effort to compel Ms. Schopfer to move forward with **her** case. Further, Ms. Schopfer has offered no explanation as to the reason for the delays or the lack of requests for extensions of time to provide her responses. Having provided no explanation for her repeated failures to respond to Defendants' discovery requests, her non-compliance with the trial court's July 17, 2009, Order, not to mention the Rules of Civil Procedure or her lack of efforts to request an extension from Defendants, Ms. Schopfer has offered nothing, beyond her general interest in her case, for the trial court to balance against Defendants' interests in moving this matter forward to prompt disposition. Thus, we are satisfied that the trial court struck the appropriate balance between the procedural need to move the case to a prompt disposition and the substantive rights of the parties, Poulos, 575 A.2d at 969, and that the sanction imposed was not too harsh given Ms. Schopfer's repeated failures to comply, not only with Defendants' discovery requests but also with the trial court's July 17, 2009, Order requiring Ms. Schopfer to answer the discovery requests within a specific period of time. Therefore, we conclude that the trial court did not abuse its discretion in dismissing Ms. Schopfer's Complaint pursuant to Pa. R.C.P. No. 4019.

Accordingly, we affirm.

RENÉE COHN JUBELIRER, Judge

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ORDER

NOW, November 5, 2010, the order of the Court of Common Pleas of Delaware County in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge