

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0051

ALANDA LEMINGS

VERSUS

**JANA SANASAC, KILN TRUCKING, INC. AND
STATE NATIONAL INSURANCE COMPANY**

Judgment Rendered: DEC 22 2016

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 619497

Honorable Donald R. Johnson, Judge Presiding

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BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, J.J.

McCLENDON, J.

The defendants appeal a trial court judgment that granted in part the plaintiff's motion for sanctions and awarded attorney fees and court costs. We affirm.

FACTS AND PROCEDURAL HISTORY

This case arises out of a car accident that occurred on March 5, 2012, when the vehicle driven by the plaintiff, Alanda Lemings, was rear-ended by a tractor trailer driven by the defendant, Jana Sanasac. Thereafter, Ms. Lemings filed a petition for the damages she suffered as a result of the accident.¹ Prior to trial, the parties stipulated as to the defendants' liability.²

On April 21, 2015, Ms. Lemings filed a Motion for Contempt and Sanctions, asserting that the defendants did not file their pretrial inserts until March 3, 2015, three months after a court-ordered deadline. Ms. Lemings asserted that the defendants had failed to act in good faith and requested attorney fees and costs as sanctions. She also asked that the defendants not be permitted to introduce witnesses or evidence, alleging prejudice to her case.

After a hearing on June 22, 2015, the trial court declined to "strike witnesses that are relevant to the defense of the matter." However, the trial court ordered that the defendants pay Ms. Lemings \$1,000.00 in attorney fees and \$195.00 in court costs in associated with the filing of the motion. On August 26, 2015, the trial court signed a judgment in accordance with its ruling, and the defendants filed a suspensive appeal.

In their sole assignment of error, the defendants contend that the trial court erred in awarding \$1,000.00 in attorney fees plus court costs as a sanction against them. They assert that they timely provided the list of witnesses and exhibits to Ms. Lemings and that the trial court's imposition of attorney fees and costs has no support in the record.

¹ For a more complete recitation of the facts, see **Lemings v. Sanasac**, 16-0052 (La.App 1 Cir. 9/20/16) (unpublished opinion), also decided this date.

² The tractor trailer was owned by the defendant, Kiln Trucking, Inc., and insured by the defendant, State National Insurance Company.

DISCUSSION

Louisiana Code of Civil Procedure article 1551 authorizes the trial court to render pretrial orders that control the subsequent course of the trial and to enforce them. **Southern Casings of Louisiana, Inc. v. Houma Avionics, Inc.**, 00-1930 (La.App. 1 Cir. 9/28/01), 809 So.2d 1040, 1055. The orderly disposition of each case and the avoidance of surprise are inherent in the theory of pretrial procedure and are sufficient reasons for allowing the trial court to require adherence to the pretrial order in the conduct of an action. **Southern Casings of Louisiana, Inc.**, 809 So.2d at 1055.

Specifically, with regard to the enforcement of pretrial orders, LSA-C.C.P. art. 1551C provides:

If a party's attorney fails to obey a pretrial order, or to appear at the pretrial and scheduling conference, or is substantially unprepared to participate in the conference or fails to participate in good faith, the court, on its own motion or on the motion of a party, after hearing, may make such orders as are just, including orders provided in Article 1471(2), (3), and (4). In lieu of or in addition to any other sanction, the court may require the party or the attorney representing the party or both to pay the reasonable expenses incurred by noncompliance with this Paragraph, including attorney fees.^[3]

Factors to be considered by courts in reaching a decision regarding sanctions include whether the attorney, the client, or both committed the misconduct, the stage of the proceeding at which the violation occurred, the

³ Louisiana Code of Civil Procedure article 1471A(2), (3), and (4) provides:

A. If a party or an officer, director, or managing agent of a party or a person designated under Article 1442 or 1448 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Article 1464 or Article 1469, the court in which the action is pending may make such orders in regard to the failure as are just, and among others any of the following:

* * *

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

presence or absence of prejudice to the opposing party's preparation of the case, and the nature and persistency of the misconduct that constitutes the violation. **Benware v. Means**, 99-1410 (La. 1/19/00), 752 So.2d 841, 847. In imposing penalties for noncompliance with a pretrial order, each case must be decided upon its own facts and circumstances, and the trial court is vested with much discretion in determining the penalty for violation of a pretrial order. **Benware**, 752 So.2d at 847. However, because statutes that authorize the imposition of penalties or sanctions are penal in nature, they must be strictly construed. **Hart v. Allstate Ins. Co.**, 437 So.2d 823, 827 (La. 1983); **Maxie v. McCormick**, 95-1105 (La.App. 1 Cir. 2/23/96), 669 So.2d 562, 565-66.

In this matter, the record establishes that pursuant to the case management schedule, signed by the trial court on June 3, 2014, the parties agreed to exchange pretrial inserts by December 5, 2014, and to file the pretrial order by December 12, 2014. The hearing transcript indicates a back and forth exchange between counsel to extend the deadline for filing the pretrial inserts, although the emails referred to by counsel are not part of the record. The defendants contend that they submitted their pretrial inserts to Ms. Lemings' counsel on December 5, 2014, and that Ms. Lemings filed her inserts on December 12, 2014, without including the pretrial inserts of the defendants. However, Ms. Lemings asserts that the pretrial inserts that were submitted to her by the defendants on December 5, 2014, were not "reliable" and were only preliminary inserts. Specifically, she avers that the defendants' attorney admitted that these inserts needed "additional work." She also alleges that the defendants' extensive witness list consisted of "all doctors [Ms. Lemings] has treated with over the course of her entire life," including those not relevant to this matter. The pretrial inserts filed by Ms. Lemings are not part of the record. However, the record does establish that the defendants did not file their pretrial inserts until March 3, 2015.

The defendants contend that Ms. Lemings' counsel agreed to extend the deadlines for submitting the pretrial order. Ms. Lemings, while admitting that

her counsel agreed to extend the deadline for the sole purpose of filing the inserts, maintains that the defendants submitted a motion requesting an extension of all discovery deadlines. She asserts that her counsel informed the defendants, through counsel, that this was not the agreement and that Ms. Lemings would timely file her pretrial inserts, which she did on December 12, 2014.

Ms. Lemings also contends that it took the defendants several months to answer the petition in this matter and that she was forced to file a motion to compel the defendants to answer her interrogatories and request for production of documents. Ms. Lemings maintains that throughout these proceedings, she has been prejudiced by the defendants' needless delays.

After reviewing the record, we cannot say that the trial court abused its wide discretion in awarding the sanction of attorney fees and court costs against the defendants under the facts of this case. The defendants agreed to abide by the trial court's deadlines and do not dispute that they filed their pretrial order almost three months after the date ordered by the trial court. Further, the defendants do not contest that the motion to extend the date for the filing of the pretrial inserts was a motion to extend the discovery deadline. Although Ms. Lemings requested in her motion for sanctions that the defendants not be allowed to present evidence or witnesses for their delay in filing the inserts, the trial court declined to do so. The defendants offered no justifiable reason for the untimely filing of their pretrial inserts, other than indicating that they thought they were filed when Ms. Lemings filed her inserts. Under these circumstances, and considering the history of delay in this case, we can find no abuse of the trial court's discretion in requiring the defendants to pay the reasonable expenses incurred by noncompliance with the court order, including attorney fees.

CONCLUSION

Considering the above, we affirm the August 26, 2015 judgment of the trial court, ordering that the defendants pay to the plaintiff \$1,000.00 in attorney fees and \$195.00 in court costs. All costs of this appeal are assessed to the

defendants, Jana Sanasac, Kiln Trucking, Inc., and State National Insurance Company.

AFFIRMED.