NOT DESIGNATED FOR PUBLICATION

GWENDOLYN M. TRAYLOR AND COREY E. STERLING	*	**NO. 2001-CA-1949**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
LAMARQUE LINCOLN-MERCURY	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 98-18958, DIVISION "C-6"
Honorable Roland L. Belsome, Judge
* * * * * *
Judge Miriam G. Waltzer
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer, Judge Michael E. Kirby)

Corey E. Sterling
3535 Apollo Drive
Apartment P-149
Metairie, LA 70003
COUNSEL FOR PLAINTIFF/APPELLANT

Erin S. Beyer
HILL, BEYER & MENARD
101 La Rue France
P. O. Box 53006
Lafayette, LA 705053006
COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

The plaintiff, Corey Sterling, appeals the dismissal of his lawsuit against the defendant, Lamarque Lincoln-Mercury ("Lamarque"). The trial court dismissed the suit with prejudice on 1 February 2001 after Mr. Sterling and the two other plaintiffs failed to provide complete responses to discovery, including the execution of attached releases pertaining to medical or employment records, by the court-imposed deadline. We affirm.

Mr. Sterling, his mother, Gwendolyn Traylor, and his cousin, Milton Legarde, filed suit against Lamarque and others, alleging, among other things, that they sustained injuries traveling in a vehicle Mr. Sterling recently purchased from Lamarque when a fire erupted in the vehicle on 4 October 1998. At issue in the case is whether the fire was attributable to Lamarque's negligent inspection of the vehicle or its failure to detect a hazard in the vehicle, as the plaintiffs claim, or, as Lamarque contends, the fire was attributable to an act of arson.

On 17 January 2001, with a trial date of 6 February 2001, Lamarque filed a motion to compel complete answers to written discovery, asserting that the plaintiffs provided incomplete answers to interrogatories and requests for production of documents propounded to them on 6 September 2000. On 26 January 2001, the trial court held a hearing on Lamarque's motion to compel, as well as its motion for summary judgment.

On 29 January 2001, the trial court signed a judgment, granting the motion to compel discovery and ordering "the [p]laintiffs to provide complete responses to discovery, including execution of the releases attached to the discovery no later than

12:00 noon, Monday, January 29, 2001." The court further ordered that "if one or more of the [p]laintiffs fail to provide complete responses to discovery by 12:00 noon, on Monday, January 29, 2001, . . . then the lawsuit of each non-responding [p]laintiff shall be dismissed with prejudice." The court took the summary judgment motion under advisement to permit the plaintiffs to file a supplemental memorandum attaching a fire report and certain relevant deposition testimony.

Thereafter, by judgment of 1 February 2001, the trial court dismissed the plaintiffs' lawsuit because they failed to comply with the court-imposed discovery deadline. On 2 February 2001, the plaintiffs' counsel filed a motion to continue trial, and on 12 February 2001, he filed a motion for a new trial, attempting to reinstate the plaintiffs' lawsuit. Plaintiffs' counsel then withdrew from the case by motion dated 7 March 2001.

The trial court held a hearing on the motion for new trial on 6 April 2001, at which time Mr. Sterling requested a continuance of the hearing because he had not been able to retain new counsel. The trial judge denied his request, confirmed that Mr. Sterling had nothing to add that was not contained in the memorandum filed by his former attorney, and instructed Mr. Sterling that his proper course of action would be to appeal. Consequently, on 6 April 2001, the trial judge rendered judgment, denying the plaintiffs' motion for new trial. Apparently not retaining new counsel, on June 5, 2001, Mr. Sterling filed a pro se motion for appeal, and on 22 January 2002, he filed a pro se brief in his appeal. Neither Ms. Traylor nor Mr. Legarde appealed.

In his pro se brief, written without full compliance with our court rules, Mr. Sterling complains that the trial judge erred by not granting his request for a continuance presumably of the 6 April 2001 hearing on the motion for new trial. Under the facts in

this case, the grant or denial of a request for a continuance is within the trial court's discretion. La.Code Civ.P. art. 1601. Mr. Sterling's request was based on his failure to have obtained new counsel prior to the hearing on the motion for new trial. The trial court recognized that Mr. Sterling's former counsel had, in fact, filed the motion for new trial with an accompanying memorandum. The court had Mr. Sterling confirm that he had nothing to add that was not included in the memorandum.

The record provides no basis on which we could conclude that the trial court abused its discretion by denying Mr. Sterling's request for a continuance of the hearing on his motion for new trial. This argument has no merit.

In his next argument, Mr. Sterling objects to the trial court's imposition of the sanction of dismissal of his case instead of a lesser sanction such as requiring him to pay expenses associated with obtaining an order to compel discovery. He appears to argue that the law distinguishes between sanctions for failure to comply with discovery and sanctions for failure to comply with court-ordered discovery, with harsher sanctions appropriate for the latter violation. According to Mr. Sterling, his delinquency falls within the first category. Although Mr. Sterling is correct about the distinction found in the law, he incorrectly assessed his deficiency. The record clearly shows that the trial court ordered each of the plaintiffs to supply complete discovery responses, along with specific, signed authorizations, by a certain deadline. We find the court's order equivalent to "court-ordered discovery."

La. Code Civ.P. art. 1471(3) provides that if a party fails to obey an order to provide or permit discovery, the court in which the action is pending may order that the action be dismissed. A trial court has much discretion in imposing sanctions for failure to comply with a discovery order, and the court's choice of sanctions for failure to

comply with a discovery order will not be reversed absent a clear showing that the trial judge abused his discretion. Magri v. Westinghouse Electric, Inc., 590 So.2d 830 (La.App. 4th Cir. 1991).

Recognizing that dismissal with prejudice is a severe penalty that should be applied only in extreme circumstances, our jurisprudence maintains that dismissal is generally reserved for those cases in which the client, not merely the attorney, is at fault and the record supports a finding that the failure was due to willfulness, bad faith, or fault by the plaintiff himself. See L&M Products, Inc. v. State, DOTD, 29,998 (La.App. 2 Cir. 12/10/97), 704 So.2d 415, 419. When a failure to make discovery occurs, it becomes incumbent upon the disobedient party to show that his failure was justified. Magri, supra. And, the record should show that the disobedient party was clearly aware that his action or inaction would result in the dismissal of his case. L&M Products, supra.

In this case, the record clearly shows that the failure to comply with a court order regarding discovery was solely due to the willfulness, bad faith, or fault of Mr. Sterling, not his former attorney. We further find clear evidence in the record that Mr. Sterling had been apprised of the harsh penalty to be imposed if he did not comply with the court's order. The court's specific order is contained in the record, and Mr. Sterling makes no attempt to justify his failure to comply with the court's deadline. While Mr. Sterling appears to claim that he did tender his authorization(s), albeit untimely, Lamarque correctly points out that the court's order encompassed completed discovery responses in addition to the tender of the signed authorizations. Given these findings, we can find no abuse of discretion in the trial court's order dismissing Mr. Sterling's claim with prejudice.

Throughout his brief, Mr. Sterling makes various complaints about his former

attorney's deficiencies and specifically sets out the argument that the trial court erred in dismissing his case because his counsel was "ineffective" by not informing him of the importance of the tardy discovery responses. Since this is not a malpractice suit, we will entertain Mr. Sterling's argument only to the extent that he seems to argue that his fault is lessened by his former attorney's culpability. There is, however, no support in the record for Mr. Sterling's argument. As we stated above, the record clearly sets out that the appropriate and critical information concerning the court's deadline, as well as the consequence for the plaintiffs' failure to comply with the court's order, was communicated to Mr. Sterling. This argument has no merit.

Finally, Mr. Sterling argues that the trial court erred in dismissing the case specifically against his mother, Ms. Traylor, because Lamarque had not argued that she failed to provide her authorizations. Ms. Traylor, however, did not appeal the judgment. Therefore, we will not address this argument offered by one plaintiff on behalf of another plaintiff who did not appeal the trial court's judgment.

Having carefully reviewed the record and finding no merit in Mr. Sterling's assigned errors, we affirm the judgment of the trial court dismissing Mr. Sterling's lawsuit with prejudice.

AFFIRMED