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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1160

Daniel J. Donahue,
Appellant,

vs.

Dakota County,
Respondent,
Inver Grove Heights Police Department,
Respondent.

Filed March 27, 2017
Affirmed
Reyes, Judge

Dakota County District Court
File No. 19HA-CV-15-2273

Daniel J. Donahue, St. Paul, Minnesota (pro se appellant)

James Backstrom, Dakota County Attorney, Helen R. Brosnahan, Assistant County Attorney, Hastings, Minnesota; and

Daniel P. Kurtz, League of Minnesota Cities, St. Paul, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant challenges the dismissal of his claims as a discovery sanction, arguing that the district court violated his due-process rights. We affirm.

FACTS

On June 20, 2013, appellant Daniel J. Donahue was incarcerated at the Dakota County Jail, during which time he was transported to Regions Hospital and placed on a 72-hour hold under the Minnesota Civil Commitment Act. Minn. Stat. § 253B.05 (2016). Appellant was later released and no charges against him were filed. On June 19, 2015, appellant filed claims of false imprisonment, assault and battery, and intentional infliction of emotion distress against respondents Dakota County and the City of Inver Grove Heights.

On August 27, 2015, the district court issued a scheduling order with a discovery production deadline of November 27, 2015. Respondents served appellant with discovery requesting answers to interrogatories and production of documents, including medical releases, pursuant to Minnesota Rule of Civil Procedure 26.02(b). Appellant telephoned Dakota County, seeking to extend the time to answer discovery, and respondents agreed. Appellant then asked the district court for an extension of the discovery production deadline, and the district court extended the discovery deadline to February 26, 2016. However, because appellant failed to provide any discovery as the new deadline date approached, respondents separately filed a motion to compel discovery. Appellant, in turn, moved for a continuance and discovery sanctions against respondents.[1] On March 17, 2016, the district court issued an order extending for a

[1] At the time of appellant's response, appellant had yet to properly serve discovery requests upon respondents and instead requested certain documents through the Minnesota Government Data Practices Act (MGDPA). *See* Minn. Stat. §§ 13.01-.90 (2016).

second time the discovery deadline date to "no later than April 1, 2016," and warned all parties that failure to comply with discovery could result in sanctions.

On April 18, 2016, appellant left a voicemail with Inver Grove Heights' (IGH) attorney stating that he would not provide access to his medical records because it would be "completely inappropriate" to do so. Respondents then filed a joint motion to dismiss as a discovery sanction under Minn. R. Civ. P. 37.02. The district court held a hearing on respondents' motion to dismiss, but appellant did not appear. The district court issued an order on May 10, 2016, dismissing with prejudice appellant's lawsuit because he failed to comply with the district court's March 17, 2016 order that appellant provide respondents with discovery by April 1. The district court stayed the dismissal until May 27, 2016, ordering appellant to provide respondents with (1) full and complete answers to respondents' discovery request and (2) full access to his medical records.

On May 26 and May 27, 2016, appellant served respondents with limited responses to their interrogatories. Appellant also provided respondents with authorizations to release documents from the Dakota County Jail and Nystrom & Associates, Ltd. Further, appellant provided a limited authorization for release of his mental-health records from Regions Hospital from the dates after the alleged incident. Respondents separately filed affidavits of non-compliance, asserting that the documents appellant served did not fully and completely respond to respondents' discovery requests and did not provide full authorization for release of appellant's medical records.

The district court subsequently dismissed appellant's claim with prejudice for failure to fully and completely comply with its discovery order. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion by dismissing his case pursuant to Minn. R. Civ. P. 37.02 because respondents' actions did not allow him to fully comply with discovery. We disagree.

The district court may issue orders compelling discovery and imposing sanctions if a party does not comply with the discovery order. Minn. R. Civ. P. 37.01-.02. Sanctions may include dismissal of all or part of a claim if a party willfully and persistently fails to comply with a discovery order without justification or excuse. Minn. R. Civ. P. 37.02(b)(3); *see, e.g.*, *Breza v. Schmitz*, 311 Minn. 236, 237, 248 N.W.2d 921, 922 (1976). The district court's discovery-related orders will not be disturbed absent an abuse of discretion. *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). But dismissal with prejudice is the most severe sanction available and should be granted only in exceptional circumstances. *Firoved v. Gen. Motors Corp.*, 277 Minn. 278, 283, 152 N.W.2d 364, 368 (1967).

Appellate courts examine the following factors to determine whether a district court has abused its discretion in imposing discovery sanctions:

> (1) if the district court set a date certain by which compliance was required, (2) if the district court gave a warning of potential sanctions for non-compliance, (3) if the failure to cooperate with discovery was an isolated event or part of a pattern, (4) if the failure to comply was willful or without justification, and (5) if the moving party has demonstrated prejudice.

Frontier Ins. Co. v. Frontline Processing Corp., 788 N.W.2d 917, 923 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010).

We examine each factor in turn.

I. Date-certain factor

The district court set a date certain, stating "[p]laintiff shall respond to [d]efendants' outstanding discovery requests no later than April 1, 2016." When appellant failed to comply with this deadline, the district court dismissed appellant's lawsuit and stayed the dismissal until May 27, 2016, warning that appellant's lawsuit would be dismissed if he did not "provide full and complete" discovery. Appellant did not provide respondents with full and complete responses to their discovery requests. Appellant also failed to provide respondents with the full medical authorizations for release.

II. Prior-warning factor

Appellant argues that he did not receive prior warning about possible dismissal of his claim. "The existence of a clear warning by the trial court that dismissal or a similar sanction would automatically result if the party did not comply with a discovery deadline [is] a significant factor in determining on appeal whether such a sanction was appropriate." *Sudheimer v. Sudheimer*, 372 N.W.2d 792, 795 (Minn. App. 1985). Here, the district court gave appellant a warning of potential sanctions for non-compliance in its March 17 and May 10, 2016 orders, including dismissal of his lawsuit. Appellant was on notice of the deadline because the district court's March 17 order was sent to his address. Furthermore, both respondents sent appellant letters of non-compliance highlighting the

court's date-certain discovery deadline of April 1, 2016, neither of which were returned as undeliverable. In fact, appellant left the attorney for IGH a voicemail after the date-certain deadline in which he indicated that he was not going to comply with discovery.

III. Part-of-pattern factor

Appellant seemingly argues that respondents' failure to cooperate with discovery by ignoring his MGDPA requests and Minnesota Rule of Civil Procedure, rule 34 filings made it impossible for him to provide the requested discovery. Minnesota Rule of Civil Procedure 26.02(b) provides for broad discovery in a civil proceeding: "[P]arties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party." Trial courts "ha[ve] considerable discretion in granting or denying discovery requests." *Erickson v. MacArthur*, 414 N.W.2d 406, 407 (Minn. 1987). Minnesota Rule of Civil Procedure 33.01 allows any party to serve written interrogatories upon any other party. Minnesota Rule of Civil Procedure 35.03 provides that a party who places in controversy the "physical, mental, or blood condition of that party . . . thereby waives any privilege that party may have in that action regarding the testimony of every person who has examined or may thereafter examine that party."

Here, respondents continuously requested appellant's response to interrogatories, production of documents, and authorizations for release of his medical records. The district court extended the discovery deadline twice and, even after dismissing appellant's lawsuit, the district court stayed the dismissal for over two weeks to provide appellant with a third opportunity to meet his discovery obligations. During that time, appellant served no formal discovery requests on respondents, submitted only cursory responses to

respondents' interrogatories, and did not authorize release of his full medical records. Additionally, on one occasion, appellant clearly stated that he would not authorize the release of his medical records to respondents. The record reflects that appellant engaged in a pattern of failing to fully and completely comply with respondents' discovery requests and the district court's orders requiring compliance.

IV. Willful-and-without-justification factor

Discovery responses that are "seriously deficient" satisfy this fourth factor. *See Frontier*, 788 N.W.2d at 924. The record demonstrates that appellant's discovery responses are seriously deficient due to appellant's persistent refusal to cooperate with the district court's orders and discovery procedures by intentionally and without justification refusing to fully answer interrogatories, production of document requests, and authorizations for release of his medical records.

V. Prejudice factor

In order to justify the harsh discovery sanction of dismissal, respondents must demonstrate that they have suffered prejudice from the discovery violation. *Jadwin v. City of Dayton*, 379 N.W.2d 194, 197 (Minn. App. 1985); *see also Sudheimer*, 372 N.W.2d at 794 ("The primary factor to be considered in a dismissal is the prejudice to the parties."). Respondents have "the burden of showing particular prejudice of such a character that some substantial right or advantage will be lost or endangered." *Firoved*, 277 Minn. at 283-84, 152 N.W.2d at 368. Prejudice justifying dismissal "should not be presumed nor inferred from the mere fact of delay." *Id.*

In respondents' joint motion to dismiss, they argued that they have been prejudiced by appellant's failure to comply with discovery because appellant did not provide them with information that is necessary to form their respective defenses. In *Frontier*, this court determined "that the inability of respondents to mount an effective defense due to Frontier's failure to comply with discovery and court orders is sufficient prejudice to warrant sanctions." 788 N.W.2d at 925. The record supports a finding that respondents have suffered prejudice in that they have not been able to adequately prepare a defense due to appellant's persistent failure to comply with their discovery requests.

Ultimately, all the factors weigh in favor of dismissal. Accordingly, we conclude that the district court did not abuse its discretion in dismissing appellant's claims against the respondents under rule 37.02(b).

Affirmed.