In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-21-00063-CV

YVES DEUGOUE, Appellant

V.

RONALD C. SHEDD AND
UNITED SERVICES AUTOMOBILE ASSOCIATION, Appellees

On Appeal from the 76th District Court
Camp County, Texas
Trial Court No. CV-20-03554

Before Morriss, C.J., Stevens and van Cleef, JJ.
Memorandum Opinion by Justice Stevens

MEMORANDUM OPINION

Following a motor vehicle accident involving Yves Deugoue and Ronald Shedd, Deugoue, proceeding pro se, sued Shedd and his insurer, United Services Automobile Association (USAA), seeking various damages allegedly caused by the collision. The trial court dismissed USAA from the suit because it was not a ripe defendant, sanctioned Deugoue for failing to answer discovery, and later dismissed Deugoue's remaining claims against Shedd for failing to pay the monetary sanctions.

On appeal, Deugoue, again proceeding pro se, contends that the trial court erred by (1) dismissing his claims against USAA, (2) imposing monetary discovery sanctions against him, and (3) dismissing his claims against Shedd for failing to pay the discovery sanctions. Because we find that (1) Deugoue's claims against USAA were barred by the "no direct action" rule, (2) the trial court was within its discretion to impose sanctions for Deugoue's failure to respond to discovery requests, and (3) the trial court was within its discretion to impose death penalty sanctions against Deugoue, we affirm the trial court's judgment.

I. Factual and Procedural Background

In July 2020, Deugoue sued Shedd and USAA, alleging that, in May 2018, he was driving westbound on Interstate 30 in or around Dallas when a car driven by Shedd struck his vehicle. Alleging personal injury, Deugoue brought claims against Shedd for negligence, negligence per se, and gross negligence. He also brought a declaratory judgment action against USAA, seeking the adjudication that USAA had a "duty to defend" Shedd in the case and that it had a "duty to indemnify" Deugoue "upon the issuance of a court judgment finding Defendant

Ronald Shedd liable as to the injuries and damages [therein] complained about." Deugoue's petition included requests for discovery. Shedd and USAA answered the suit and entered a general denial.

In August 2020, Shedd and USAA served on Deugoue a set of discovery requests, which Deugoue failed to answer. Instead, he filed a motion for a protective order in which he argued that the discovery requests, generally, "constituted an unequivocal fishing expedition" and that they were "overly broad and not reasonably calculated to lead to discovery of admissible evidence." Deugoue asked the trial court to "strike or abate all of the discovery propounded on him." Written requests for responses went unanswered by Deugoue. In October, with their discovery requests still unanswered, Shedd and USAA filed a motion to compel discovery. The trial court set a hearing for November 2, 2020, to hear the motion to compel and the defendants' request for a scheduling order.

In order to hear the motion to the compel, Deugoue's motion for protective order, and the parties' competing requests for a scheduling order, the trial court rescheduled the hearing for two days later, on November 4, 2020. The hearing was scheduled to be conducted via Zoom. Even though he had notice, Deugoue failed to appear for the hearing. The trial court proceeded with the hearing and granted USAA and Shedd's motion to compel, denied Deugoue's motion for protective order, and entered a scheduling order and discovery control plan. The trial court also granted USAA and Shedd's request for expenses and ordered Deugoue to pay $2,304.00 in attorney fees for the costs incurred to pursue the motion to compel. Deugoue was ordered to pay the attorney fee sanction on or before December 5, 2020.

Deugoue moved to vacate the trial court's orders arguing that the Zoom link he received from the court did not work and that the trial court's error prevented him from attending the hearing via Zoom. The trial court denied his motion. A month later, Deugoue again filed a motion to vacate the trial court's November 5, 2020, order granting sanctions, arguing that he was denied due process and a fair opportunity to be heard. The trial court denied the motion.

Because Deugoue largely failed to answer the discovery requests and completely failed to pay the court-ordered sanctions, Shedd and USAA filed special exceptions and a motion to dismiss his claims. A hearing on the motion was set for February 5, 2021. At the February hearing, USAA orally moved to dismiss it as a party defendant because Texas is a "no direct action state." After hearing the arguments of the parties, the trial court dismissed, with prejudice, all of Deugoue's claims against USAA. On April 8, 2021, the trial court again ordered Deugoue to pay the $2,304.00 in attorney fees within ten days and held that Deugoue would "not be allowed any further discovery" in the case until the fees were paid. After Deugoue failed to pay the attorney fees sanction, on June 4, 2021, Shedd moved for dismissal of Deugoue's claims, arguing that dismissal was warranted because even though the fees were ordered paid on November 5, 2020, Deugoue had continued to defy the trial court's orders by not paying them.

On June 11, 2021, Deugoue noticed Shedd's deposition without conferring with Shedd's counsel and in contravention of the trial court's order that he not conduct further discovery until the attorney fees sanction had been paid. Shedd moved to quash the notice of deposition.

On June 21, 2021, the trial court heard Shedd's motion to dismiss, Shedd's motion to quash, and Deugoue's previously filed motion for a default judgment. At the hearing, Deugoue

claimed that he had sent the check nearly two months earlier via certified mail but that the postal services' tracking information reflected that the mail was "in transit." The trial court found that Deugoue's original check was "lost in transit," and instructed Deugoue to cancel that check, to prepare a new check, and to send the new check to Shedd's counsel via overnight mail no later than Friday, June 25, 2021. The trial court's rulings regarding the check mooted Shedd's motion to dismiss. The trial court partially granted Shedd's motion to quash and ordered him to appear for deposition on July 21, 2021, at the offices of Fee, Smith, Sharp & Vitullo in Dallas. Deugoue argued that he was entitled to default judgment because Shedd had "repeatedly abuse[d] the discovery process." Finding that there was "no evidence" that Shedd had "abused the discovery process whatsoever," the trial court denied his motion.

Two days after the hearing, Deugoue filed a notice claiming that he had complied with the trial court's order to pay the attorney fees, but that delivery of the check would take between two and five business days. On June 28, 2021, five days after Deugoue's notice was filed, three days after the trial court's deadline, and nearly eight months after the trial court initially ordered Deugoue to pay the $2,304.00, Shedd filed another motion to dismiss because he had not received the check. In response, Deugoue argued that the motion to dismiss was "frivolous and meritless" because he had fully complied with the trial court's orders and that any delay in Shedd receiving the funds was his own fault because of his refusal to accept payment via credit card. The trial court granted Shedd's motion, dismissed with prejudice all of Deugoue's claims against Shedd, and entered a take-nothing judgment in Shedd's favor. The trial court later filed findings of fact and conclusions of law.

II. The Trial Court Did Not Err in Dismissing Claims Against USAA

Deugoue contends that the trial court erred in dismissing his claims against USAA. We disagree.

The general rule in Texas is "that an injured party cannot sue the tortfeasor's insurer directly until the tortfeasor's liability has been finally determined by agreement or judgment." *In re Shire PLC*, 633 S.W.3d 1, 14 (Tex. App.—Texarkana 2021, orig. proceeding) (quoting *In re Essex Ins. Co.*, 450 S.W.3d 524, 525 (Tex. 2014) (orig. proceeding) (per curiam) (quoting *Angus Chem. Co. v. IMC Fertilizer, Inc.*, 939 S.W.2d 138, 138 (Tex. 1997) (orig. proceeding) (per curiam))). "Regardless of the nature of the relief sought, a suit brought directly against an insurer before liability has been determined is subject to dismissal." *Auzenne v. Great Lakes Reinsurance, PLC*, 497 S.W.3d 35, 38 (Tex. App.—Houston [14th Dist.] May 10, 2016, no pet.) (citing *In re Essex Ins. Co.*, 450 S.W.3d at 526–28). "This general rule has been described as the 'no direct action' rule." *Landmark Am. Ins. Co. v. Eagle Supp. & Mfg. LP*, 530 S.W.3d 761, 767 (Tex. App.—Eastland 2017, no pet.) (citing *In re Essex Ins. Co.*, 450 S.W.3d at 526).

Here, Deugoue filed claims against Shedd and Shedd's insurer, USAA. Yet, Deugoue failed to first obtain a judgment establishing that Shedd was liable for Deugoue's injuries. Thus, Deugoue was barred from bringing a direct action against USAA. *See In re Essex Ins. Co.*, 450 S.W.3d 524, 526 (Tex. 2014) (orig. proceeding) (per curiam). Because Deugoue failed to prove

any applicable exception to the "no direct action" rule, we overrule this point of error and affirm the trial court's dismissal of his claims against USAA.[1]

III. The Trial Court Did Not Abuse its Discretion in Awarding Attorney Fees

Deugoue also argued that the trial court erred in imposing monetary sanctions against him.

"We review a trial court's ruling on a motion for sanctions for an abuse of discretion." *Knoderer v. State Farm Lloyds*, 515 S.W.3d 21, 31 (Tex. App.—Texarkana 2017, pets. denied) (citing *Cire v. Cummings*, 134 S.W.3d 835, 838 (Tex. 2004)). We will reverse the trial court's ruling only if it "acted 'without reference to any guiding rules and principles,' such that its ruling was arbitrary or unreasonable." *Am. Flood Rsch., Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006) (per curiam) (quoting *Cire*, 134 S.W.3d at 839).

A party "may apply for sanctions or an order compelling discovery . . . [i]f a party fails . . . to serve answers or objections to interrogatories submitted under Rule 197, after proper service of the interrogatories." TEX. R. CIV. P. 215.1(b)(3) (footnote omitted) (citations omitted). The same is also true if a party fails "to serve a written response to a request for inspection under Rule 196, after proper service of the request." *Id.* That said, a discovery sanction must be just, that is, it must bear a direct relationship between the improper conduct and the sanction imposed, and it "should be no more severe than necessary to satisfy its legitimate purposes." *TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991) (orig. proceeding).

[1]The issue of whether the trial court erred in dismissing the claims against USAA with prejudice is moot because the trial court properly dismissed Deugoue's claims against Shedd with prejudice, making it impossible for Deugoue to first obtain a judgment against Shedd as is required for a suit against USAA.

The type of sanction that may be imposed under Rule 215.1(b) is "any sanction authorized by Rule 215.2(b)." TEX. R. CIV. P. 215.1(b). Monetary sanctions authorized by Rule 215.2(b) are limited to "reasonable expenses, including attorney fees, caused by the discovery abuse." *Lopez v. La Madeleine of Tex., Inc.*, 200 S.W.3d 854, 865 (Tex. App.—Dallas 2006, no pet.); *see* TEX. R. CIV. P. 215.2(b)(2), (8).

Additionally, under Rule 215.1(d), if a trial court grants a necessary motion to compel, the court "shall" award reasonable attorney fees. The trial court is required to do so unless it finds that "the motion was substantially justified or that other circumstances [made] an award of expenses unjust." *Clark v. Clark*, 546 S.W.3d 268, 273 (Tex. App.—El Paso 2017, no pet.) (quoting TEX. R. CIV. P. 215.1(d)).

Here, the record establishes that Deugoue failed to respond to properly served interrogatories, requests for production, and requests for disclosures. As a result, Shedd and USAA filed a motion to compel, which included a request for expenses under Rule 215.1(d). After a hearing, the trial court granted the motion to compel and, under Rule 215, ordered Deugoue to pay $2,304.00 to Shedd and USAA. Thus, there was a direct relationship between the sanction of $2,304.00 in fees and Deugoue's failure to respond to discovery. Additionally, the fees awarded were meant to reimburse Shedd and USAA for the cost of pursuing the motion to compel, and the amount assessed was no more severe than necessary to serve its purpose of reimbursement. *See TransAmerican Nat. Gas Corp.*, 811 S.W.2d at 913.

Deugoue argues that the trial court denied him due process because he was not present for the hearing. He argues that he "was not given a genuine, and full and fair opportunity to be

heard as to Defendants' propounded sanctions." The hearing on the motion to compel was initially set for hearing on November 2, 2020. At the hearing, the parties and the trial court agreed to reschedule the hearing for November 4, 2020, at 9:00 a.m. Even so, Deugoue failed to appear for the Zoom hearing on November 4. Deugoue argued that he had technical issues and was unable to connect to the Zoom link provided by the trial court. Still, Deugoue had notice of the hearing.[2] And even though he missed the hearing, Deugoue had a reasonable opportunity to be heard on those issues at a later date. Deugoue argued his position regarding the sanctions and his failure to respond to discovery in his December 2020 motion to vacate the sanctions. The trial court ruled on his motion on December 11, 2020. Deugoue again raised the issue with the trial court in his March 2021 letter to the court. The trial court acknowledged receipt of the letter and issued a letter ruling. As a result, we find this argument without merit.[3]

Deugoue further claims that the trial court was required to make a finding of bad faith. He argues that the trial court's findings of fact and conclusions of law "did not make any findings whatsoever that Deugoue acted in bad faith as to the matters that led to the issuance of the purported 11/05/2020 Sanctions Order." Instead, Deugoue points to the trial court's language that the flagrant bad faith finding was a result of "Plaintiff's failure to comply with

[2]"Rule 215.3, which authorizes a trial court to impose sanctions, does require 'notice and hearing' before sanctions are imposed." *Cire v. Cummings*, 134 S.W.3d 835, 843 (Tex. 2004) (citing TEX. R. CIV. P. 215.3). "However, nothing in the rule indicates that this must be an 'oral hearing.'" *Id.* at 844. Here, the trial court chose to hold an oral hearing, and it is undisputed that Deugoue received notice of that hearing.

[3]Deugoue also claims that the trial court failed to (1) give him the opportunity to present his motion for protection to the court and (2) inquire into the grounds of the motion. However, we note that Duegoue's motion for protection was on file with the court before the November 4 hearing. The motion is twelve pages long, states the grounds for seeking protection, and cites applicable caselaw in support of the motion. As reflected in the trial court's November 4 order denying the motion, the trial court recited that it reviewed and considered Deugoue's motion before denying it.

'orders' of the Court." Yet, even if no such finding had been made, "Rule 215 does not require a trial court to make findings before imposing discovery sanctions."[4] *TransAmerican Nat. Gas Corp.*, 811 S.W.2d at 918 n.9. Thus, we find this argument meritless.

As to Deugoue's arguments that (1) the trial court violated the equal protection clause and (2) the doctrine of unclean hands precluded the award of sanctions against him, we find that these issues were not adequately briefed. Deugoue's brief fails to explain how or why the trial court's ruling violated the equal protection clause. He has also failed to provide any applicable caselaw supporting this argument. Additionally, Deugoue argues that, because Shedd served "frivolous, unreasonable, and unbounded" requests for production on him, the doctrine of unclean hands should have precluded the trial court from awarding "one-sided" sanctions against him. Yet, Deugoue also fails to provide any caselaw to support this argument.[5] This Court "review[s] and evaluate[s] pro se pleadings with liberality and patience, but otherwise [applies] the same standards applicable to pleadings drafted by lawyers." *Champion v. Robinson*, 392 S.W.3d 118, 128 (Tex. App.—Texarkana 2012, pet. denied) (citing *Foster v. Williams*, 74 S.W.3d 200, 202 n.1 (Tex. App.—Texarkana 2002, pet. denied)). These issues were not adequately briefed under Rule 38.1 and are, therefore, overruled. TEX. R. APP. P. 38.1(i) ("The

[4]Sanctions awarded under a trial court's inherent authority require a finding of bad faith. *Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 718 (Tex. 2020). However, here sanctions were not awarded under the trial court's inherent authority. Instead, the trial court's discovery sanctions were awarded under the court's express, rule-based authority of Rule 215, which does not require a finding of bad faith. *See* TEX. R. CIV. P. 215; *TransAmerican Nat. Gas. Corp*., 811 S.W.2d at 918 n.9.

[5]In support of his position on the defense of unclean hands, Deugoue relies on *Kuehnert v. Texstar Corp.*, 412 F.2d 700 (5th Cir. 1969). In *Kuehnert*, the plaintiff sued under Section 10(b) of the Securities and Exchange Act. The *Kuehnert* case does not involve a personal injury action, nor does it involve a discovery dispute or the award of sanctions. It is, therefore, inapposite.

brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.").

Based on the foregoing, Deugoue has failed to show that the trial court abused its discretion in imposing monetary discovery sanctions. As a result, we overrule this point of error.

IV. The Trial Court Did Not Abuse Its Discretion by Dismissing the Claims Against Shedd

Deugoue contends that the trial court erred in dismissing his claims against Shedd.

Any sanction that adjudicates a claim and precludes the presentation of the merits of the case constitutes a death penalty sanction. *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 845 (Tex. 1992) (orig. proceeding); *TransAmerican Nat. Gas Corp.*, 811 S.W.2d at 918. "Whether the imposition of [discovery] sanctions is just is measured by two standards: 1) the finding of a direct relationship between the offensive conduct and the sanction imposed; and 2) the sanction, in order to be just, must not be excessive." *In re Dynamic Health, Inc.*, 32 S.W.3d 876, 882 (Tex. App.—Texarkana 2000, orig. proceeding) (citing *TransAmerican Nat. Gas Corp.*, 811 S.W.2d at 917). There are two other criteria that must be met, however, if the sanction is a death penalty sanction: (1) "the trial court should first impose lesser sanctions to test the effectiveness of these less severe sanctions at securing compliance" and (2) "the sanctioned conduct [must justify] a presumption that the party's claim or defense lacks merit." *Id.* (citing *Prudential Prop. & Cas. Co. v. Dow Chevrolet-Olds, Inc.*, 10 S.W.3d 97, 103 (Tex. App.—Texarkana 1999, pet. dism'd)).

Here, in its findings of fact and conclusions of law, the trial court found that it ordered Deugoue, under Rule 215.1, to pay the attorney fees on November 5, 2020, on April 8, 2021, and

on June 23, 2021. The trial court also found that Deugoue failed to comply with all three orders. Additionally, the trial court found that Deugoue's repeated failure to comply with its orders "constituted flagrant bad faith." In an appellate review of sanctions, "unchallenged findings [of fact] must, if supported by evidence, be taken by the appellate court to establish the facts found." *Wright v. State Farm Lloyds*, No. 03-20-00384-CV, 2022 WL 567860, at *6 (Tex. App.—Austin Feb. 25, 2022, no pet.) (mem. op.).

> Although we do not afford these findings [made after a sanctions hearing] the same legal presumptions that control findings filed after a nonjury trial on the merits, we must nevertheless defer to the trial court's resolution of factual matters that underlie its discretionary rulings and therefore may not substitute our judgment for the trial court's judgment in those matters.

Williams v. Chisolm, 111 S.W.3d 811, 815 (Tex. App.—Houston [1st Dist.] 2003, no pet.). We take the findings as true in this case because there is evidence in the record to support the findings and Deugoue does not dispute that he failed to pay the fees by the court-ordered deadlines.

If, as is the case here, a party fails to comply with a discovery request or to obey a court's order under Rule 215.1, the trial court may "dismiss[] with or without prejudice the action or proceedings." TEX. R. CIV. P. 215.2(b)(5). The trial court's sanction of dismissal was directed against Deugoue's wrongful conduct and toward remedying the prejudice suffered by Shedd due to Deugoue's failure to obey the trial court's orders. As Deugoue was proceeding pro se, he alone was responsible for complying with the trial court's orders. Furthermore, death penalty sanctions in this case were not excessive, as the trial court initially imposed lesser sanctions by ordering Deugoue to pay Shedd and USAA $2,304.00 in attorney fees and by barring him from

conducting any further discovery until the fees were paid. Nevertheless, the lesser sanctions were ineffective, because Deugoue repeatedly failed to pay the fees, made various excuses about why the fees had not been paid, and noticed Shedd for deposition despite the trial court's order prohibiting discovery. Based on Deugoue's conduct, we find that the imposition of further, lesser sanctions would not have been successful in compelling Deugoue's compliance. Moreover, death penalty sanctions are justified in this case because Deugoue's actions constituted "flagrant bad faith." *See TransAmerican Nat. Gas Corp.*, 811 S.W.2d at 920. As a result, the trial court was within its broad discretion to grant Shedd's motion to dismiss. Accordingly, we overrule this point of error.[6]

V. Conclusion

For the reasons stated, we affirm the trial court's judgment.

Scott E. Stevens
Justice

Date submitted: July 12, 2022
Date decided: September 1, 2022

[6]Deugoue also contends that the trial court erred in (1) partially quashing his notice of Shedd's deposition, (2) denying his motion for default judgment, (3) denying his motion to reinstate, and (4) "conducting proceedings in closed court and/or with lack of **contemporaneous** transparency." Due to our disposition that the trial court was within its discretion to dismiss Deugoue's claims against Shedd, we need not address his argument that the trial court erred in partially quashing his notice of Shedd's deposition because the point of error is no longer "necessary to the final disposition of the appeal." TEX. R. APP. P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal."). As to arguments about his motions and the trial court conducting proceedings in closed court or without transparency, Deugoue has waived or inadequately briefed those grounds for reversal in that the arguments raised are conclusory and do not contain clear and concise statements as to why the trial court erred, the applicable appellate standards of review, or appropriate citations to caselaw. TEX. R. APP. P. 38.1(e), (h), (i); TEX. R. CIV. P. 166a(c).