

IN THE COURT OF APPEALS OF IOWA

No. 0-028 / 09-0562
Filed March 10, 2010

HARVEY CHRISTENSON,
Plaintiff-Appellant,

vs.

**FIRST NATIONAL BANK OF
SIOUX CENTER, IOWA, PENDER STATE
BANK OF NEBRASKA, and
KEVIN WOLTERSTORFF, Individually,**
Defendants-Appellees.

Appeal from the Iowa District Court for Chickasaw County, Richard D.
Stochl, Judge.

Plaintiff appeals the district court's sanction of dismissal. **AFFIRMED.**

Kevin E. Schoeberl of Story & Schoeberl Law Firm, Cresco, for appellant.

Patrick M. Roby of Elderkin & Pirnie, P.L.C., Cedar Rapids, and Bernard
L. Spaeth of Whitfield & Eddy, P.L.C., Des Moines, for appellees.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

Harvey Christenson appeals from the district court's dismissal of his suit as sanction for failing to comply with discovery orders. Because we find this decision a reasonable exercise of the district court's discretion, we affirm.

Christenson filed suit against defendants in September 2007, asserting claims of fraud, fraudulent inducement, and misrepresentation.

On February 26, 2008, the district court granted Pender State Bank's motion to compel discovery.

On March 25, the district court granted Pender State Bank's motion for sanctions, noted "it has taken more than 100 days for Plaintiff to provide the discovery requested," and ordered Christenson to pay defendant's attorney \$200 as a sanction for failing to comply with the court's order compelling discovery.

A scheduling order was entered on April 4. Trial date was set for April 8, 2009.

On May 27, 2008, the district court granted First National Bank's supplemental motion to compel, finding that Christenson's delinquent response to production of documents was not certified and that his answers to interrogatories were "inadequate." He was ordered to file certification within five days, to "submit full and complete responses to each of the interrogatories propounded" within fifteen days, and was notified that "[f]ailure to comply will result in appropriate sanctions."

On July 22, the district court entered an order, following a hearing on First National Bank's motion for sanctions. The court stated:

The court is informed that plaintiff has again supplemented responses to discovery. However, issues may still remain as to whether discovery requests have been fully complied with . . . [as defendant's attorney] has not yet had an opportunity to thoroughly review the most recently supplemented responses.

The fact remains that plaintiff's responses are seriously delinquent. Initial responses were willfully inadequate. Defendant has unnecessarily spent significant time in attempting to obtain full compliance. The court determines that an award of attorney's fees is appropriate. Additional sanctions may be subsequently considered in the event plaintiff has not fully complied with the discovery responses. Good cause has not been shown as to why the discovery responses were not timely submitted and certified without court intervention.

Christenson was ordered to pay \$1500 in attorney fees.

On September 3, Christenson filed a designation of experts.

On October 24, Christenson's attorneys filed an application for permission to withdraw, which asserted a breakdown in the communications with plaintiff. The application was served on some but not all defense counsel.

On October 27, the defendants¹ filed a "Motion to Strike Designation of Expert Witnesses, Alternative Motion for Extension of Time to Designate Experts, and Motion for Additional Sanctions." Defendants asserted the plaintiff's designation was incomplete and lacking in essential information. They also noted that Christenson had yet to respond to the interrogatory related to experts plaintiff expected to call at trial. They argued that without proper responses, they could not determine whether defense experts would be necessary. Defendants requested an order striking the designation and precluding Christenson from offering expert testimony, or in the alternative, an order that plaintiff respond by a date certain and extend defendants' deadline for designating experts.

¹ The motion was First National Bank and Wolterstorff's, in which Pender State Bank joined.

Defendants prayed for additional attorney fees; an order directing payment of the attorney fees awarded in July, plus sanctions; and “in the event Christenson fails and refuses to pay the sanctions imposed, that the court entertain a motion for additional sanctions to and including dismissal of Christenson’s claim.”

On November 18, hearing was held on the pending motions. That same date the court entered an order in which Christenson’s attorneys were granted leave to withdraw.² Christenson was ordered to “fully supplement” his answer to the interrogatory related to expected expert witnesses by December 31 “or Plaintiff’s petition will be dismissed at Plaintiff’s cost.” He was further ordered to pay the \$1500 in attorney fees awarded in July by December 31.

On January 8, 2009, defendants filed a renewed motion to strike plaintiff’s designation of expert witnesses and motion for sanctions, noting that the plaintiff’s December 31, 2008 discovery response did not comply with the court’s November 18 order, and requesting a variety of additional sanctions, including an order dismissing Christenson’s claim.

A hearing was held on February 10. On March 19, 2009, the district court ruled in part:

Mr. Christenson has been a party to many delays in these proceedings. The Court finds his actions in failing to timely respond to discovery and his actions in failing to give credible evidence to be willful and done for the sole purpose of interfering with the judicial process. He has twice prior been sanctioned and has ignored court orders. Only in the face of dismissal has he seemed to indicate a true desire to be cooperative. This Court finds his found cooperativeness to be a day late and a dollar short.

² Notices of withdrawal for counsel for Christenson were not filed until March 9 and March 19, 2009, however.

The district court dismissed the case with prejudice.

Christenson now appeals.

Our review is for the correction of errors at law. Iowa R. App. P. 6.907. A district court's order imposing discovery sanctions will not be disturbed unless the court abused its discretion. *Troendle v. Hanson*, 570 N.W.2d 753, 755 (Iowa 1997). An abuse of discretion consists of a ruling which rests upon clearly untenable or unreasonable grounds. *Id.* In order to justify the sanction of dismissal, a party's noncompliance with a court's discovery orders must be the result of willfulness, fault, or bad faith. *Id.* We must be satisfied that substantial evidence supports any factual findings necessary to the court's exercise of its discretion. *Id.*

The district court noted that dismissal of an action for a party's noncompliance with court orders was a drastic sanction. It considered Christenson's course of conduct throughout the proceedings, noted the prior sanctions imposed, and Christenson's failure to comply with court orders and sanctions. The district court concluded Christenson's "actions in failing to timely respond to discovery and his actions in failing to give credible evidence to be willful and done for the sole purpose of interfering with the judicial process." The finding is supported by substantial evidence and here justifies dismissal as a discovery sanction. We therefore affirm.

AFFIRMED.