

IN THE COURT OF APPEALS OF IOWA

No. 6-605 / 05-0466
Filed September 21, 2006

**IN RE THE MARRIAGE OF TAMMY A. GRAY
AND TONY A. GRAY**

**Upon the Petition of
TAMMY A. GRAY,**
Petitioner-Appellee,

**And Concerning
TONY A. GRAY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Muscatine County, Nancy S. Tabor, Judge.

Tony A. Gray appeals from the district court's order imposing sanctions for his failure to comply with the court's ruling on Tammy (a/k/a Tamra) A. Gray's motion to compel discovery. **AFFIRMED.**

Roland Caldwell, Muscatine, for appellant.

Linda Allison and William Tharp, Muscatine, for appellee.

Steven Kundel, Muscatine, for minor child.

Considered by Huitink, P.J., and Mahan and Eisenhauer, JJ.

HUITINK, P.J.

Tony A. Gray appeals from the district court's order imposing sanctions for his failure to comply with the court's ruling on Tammy (a/k/a Tamra) A. Gray's motion to compel discovery. We affirm.

I. Background Facts & Proceedings.

Tamra and Tony Gray were married on February 8, 1994. The parties have three children. On December 16, 2003, Tamra petitioned the district court for a dissolution of marriage and a protective order. On December 23, 2003, Esther Dean filed an appearance and answer on behalf of Tony. On February 9, 2004, the district court entered an order requiring Tony pay seventy-five dollars monthly child support. On February 20, 2004, Dean withdrew as Tony's attorney. On March 23, 2004, Charles Hallberg entered an appearance on Tony's behalf. On May 7, 2004, Tony filed a notice of interrogatories, and on May 27, 2004, Tamra filed a notice of interrogatories. On August 12, 2004, Tamra filed a motion to compel Tony's response to her interrogatories and request for production.

The motion to compel included a letter from Tamra's attorney to Hallberg stating she agreed to a one-month extension for Tony to respond to her discovery requests. The letter also indicated as of August 5, 2004, she had not received Tony's response to her discovery request. On August 19, 2004, Tony filed a motion to change temporary custody, a motion for Hallberg to withdraw as his attorney, and a motion to continue. On August 18, 2004, Tony also filed a written statement that he was terminating Hallberg. On August 24, 2004, the district court granted Hallberg's request to withdraw. The court advised Tony that he could either represent himself or find other counsel, but that his new attorney

should enter his or her appearance no later than September 8, 2004. The court also required Tony to respond to the interrogatories and motion to produce documents on or before September 20, 2004.

On September 9, 2004, Roland M. Caldwell entered an appearance for Tony. Tamra moved for sanctions on September 21, 2004, citing Tony's failure to comply with the court's discovery order. On October 7, 2004, the court entered an order imposing sanctions on Tony for his failure to comply with the court's earlier discovery orders. The court's order stated:

1. Respondent shall not be allowed to support or oppose any designated claims or defenses and is prohibited from introducing designated matters into evidence in this action by the petitioner in her interrogatories or request for production.
2. The respondent shall pay to the petitioner's attorney, Linda L. Allison, the sum of \$300.00 for attorney fees incurred in obtaining this Order.

The matter proceeded to trial on February 2, 2005. In accordance with her ruling, the trial judge precluded Tony's offer of evidence. Tony, however, was permitted to cross-examine Tamra and her witnesses. On February 24, 2005, the trial court entered its findings of fact, conclusions of law, and decree. The decree awarded Tamra sole legal custody of the children. Tony was granted specified visitation. Because Tony is blind and his sole source of income is social security disability, he was not ordered to pay child support. With the exception of the attorney fees awarded pursuant to the earlier mentioned sanction ruling, the trial court denied the parties' requests for attorney fees.

On appeal, Tony argues:

- I. The trial court abused its discretion in sanctioning Tony as he had provided answers to twenty-one of the twenty-seven

interrogatories and fifteen of the nineteen documents request [sic] for production of documents.

- II. The trial court abused its discretion in sanctioning Tony because there were lesser sanctions available to the court.
- III. The trial court abused its discretion in sanctioning Tony as the sanctions imposed by the court precluded a decision on the merits of the case.

II. Standard of Review.

The imposition of discovery sanctions by a trial court is discretionary and will not be reversed unless there has been an abuse of discretion. *Bindel v. Larrington*, 543 N.W.2d 912, 914 (Iowa Ct. App. 1995). An abuse of discretion exists in the imposition of discovery sanctions where no substantial evidence exists to support the ruling. *Morris-Rosdail v. Schechinger*, 576 N.W.2d 609, 611 (Iowa Ct. App. 1998). An abuse of discretion consists of a ruling which rests upon clearly untenable or unreasonable grounds. *Bindel*, 543 N.W.2d at 914. The fact that less drastic sanctions are available to the trial court does not require a finding of abuse of discretion. *Id.*

III. Merits.

Iowa Rule of Civil Procedure 1.517 authorizes the court to enter an order compelling a party to comply with the discovery process through production of documents and responses to interrogatories. If the court grants the motion, the court can require the party whose conduct necessitated the motion to pay the moving party's expenses, including attorney's fees, accrued in acquiring the order to compel. Iowa R. Civ. P. 1.517(1)(d). If the disobedient party fails to comply with the order compelling discovery, the court may enter an order "refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in

evidence.” Iowa R. Civ. P. 1.517(2)(b)(2). However, “[b]efore a court can impose discovery sanctions, an affected party must be afforded the opportunity of a hearing.” *Schwarz v. Meyer*, 500 N.W.2d 87, 89 (Iowa Ct. App. 1993). In order to justify the sanction of a default judgment, “a party’s noncompliance with a court’s discovery orders must be the result of willfulness, fault, or bad faith.” *In re Marriage of Williams*, 595 N.W.2d 126, 129 (Iowa 1999).

At the sanctions hearing, Tony cited his disability and counsel’s failure to furnish him with all of the interrogatories as reasons for his failure to comply with the court’s discovery order. He also cited his partial compliance by serving responses to some of the interrogatories immediately before the sanctions hearing. The trial judge heard and rejected Tony’s claims based on her assessment of Tony’s credibility, as well as the remaining record made at the hearing. As noted earlier, the imposition of sanctions implicates the trial court’s broad discretion. There is no dispute concerning the untimeliness of Tony’s response to discovery. The resulting sanctions imposed fall well within those authorized by rule 1.517(2) and are supported by the trial judge’s findings of fact. Because the trial court’s ruling is neither clearly untenable nor unreasonable, we find no abuse of discretion and decline to interfere. The trial court’s order imposing sanctions is affirmed.

AFFIRMED.