

IN THE COURT OF APPEALS OF IOWA

No. 7-693 / 06-1948
Filed December 12, 2007

MICHELE WADE,
Plaintiff-Appellant,

vs.

**KENNETH GRUNDEN and
K & P ENTERPRIZES, L.T.D.,**
Defendants-Appellees.

Appeal from the Iowa District Court for Scott County, James E. Kelley,
Judge.

Plaintiff in a personal injury action appeals, challenging a ruling that prohibited her, as a sanction for failure to make discovery, from claiming certain items of damages. **AFFIRMED.**

Robert S. Gallagher of Gallagher, Millage, & Gallagher, P.L.C., Davenport,
for appellant.

Elliott R. McDonald III of McDonald, Woodward, & Ivers, P.C., Davenport,
for appellees.

Heard by Miller, P.J., and Eisenhauer and Baker, JJ.

MILLER, P.J.

Plaintiff Michele Wade appeals, challenging a district court order granting a motion in limine by the defendants, Kenneth Grunden and K & P Enterprises, L.T.D. (the defendants), and prohibiting Wade from claiming certain items of damages because Wade did not timely supplement answers to interrogatories concerning types and amounts of damages sought by Wade. We affirm.

This case arises out of an automobile accident which occurred on March 28, 2003, when Wade's vehicle was struck by a tree which fell from the defendants' property, as a result of which Wade claims she suffered soft tissue injuries to her neck and shoulder. Wade filed her petition for damages on October 7, 2004. On or about December 23, 2004, the defendants propounded their first set of interrogatories and request for production of documents upon Wade. On June 17, 2005, Wade provided the defendants with her answers and responses, approximately five months after they were due. See Iowa R. Civ. P. 1.509(1) (providing that answers to interrogatories shall be served upon all adverse parties within thirty days after the interrogatories are served). Interrogatory twenty-one asked Wade to "Identify with particularity the total amount of damages you are seeking in this lawsuit." Interrogatory twenty-two requested specifics regarding the amounts and types of damages Wade was claiming, including an itemization of amounts claimed for separate items of her damages claim. Wade answered both interrogatories identically, stating: "Plaintiff is still receiving treatment for injuries sustained as a result of this

accident. Still under investigation. Plaintiff will supplement pursuant to applicable Rules of Civil Procedure.”

On or about October 27, 2005, Wade sent supplemental answers to the defendants. In response to interrogatory twenty-one she gave the same answer as she had in June, set forth above, but added to it the following:

Please review the itemized medical billings as attached Plaintiff's Response to Request for Production of Documents and Supplemental Response to Request for Production of Documents. Further, attached to Plaintiff's Supplemental Response to Request for Production of Documents is a photocopy of a financing invoice in the amount of \$3,536.05, representing the amount financed to purchase a bed.

Wade did not provide any supplemental response to interrogatory twenty-two.

On January 3, 2006, over a year after the defendants first served the interrogatories, defendants sent Wade a formal request for supplementation pursuant to Iowa Rules of Civil Procedure 1.503(4)(d) and 1.509(2). Wade did not respond to this request for supplementation. On January 27, 2006, a settlement conference was held in anticipation of the trial set for February 13, 2006. At that time Wade provided defendants with information indicating she had incurred \$2,000 in medical bills in addition to the amount revealed in her October 2005 supplemental discovery responses. However, she still did not provide an answer to interrogatories itemizing elements and amounts of damages as requested in interrogatory twenty-two. In a “Summary of Damages” that appears to have been filed as a part of or with “Plaintiff's Settlement Conference Statement,” Wade did list damages consisting in very large part of \$14,822.36 in past medical bills and \$13,425 for loss of an automobile. The summary did not,

however, identify any amount, or any claim for, future medical expenses, past loss of function, future loss of function, past pain and suffering, or future pain and suffering. As hereafter discussed, the trial court later heard and ruled on a defendants' motion in limine. In its ruling the court noted, in a portion of the ruling that is not questioned on appeal, that Wade's automobile damages had been reimbursed to her by her insurance company, except for a \$500 deductible, and the amount of any repayment to her insurance company had been submitted to arbitration between Wade's insurance company and the defendants' insurance company. The amount of Wade's claimed damages as of the settlement conference, although not shown by answers to interrogatories, thus appears to have been less than \$17,000.

On February 13, 2006, defendants sent another letter to Wade specifically requesting, among other things, that she supplement her interrogatory responses "with regard to the amount of damages you are claiming." At Wade's request the trial was then continued to Monday, June 26, 2006, because of the unavailability of her treating physician. Between the February 13, 2006 letter sent by the defendants to Wade and June 21, 2006, Wade did not provide a supplemental response to interrogatory twenty-one or interrogatory twenty-two regarding the total amount and individual items and amounts of her claimed damages.

On June 21, 2006, defendants filed a motion in limine seeking, in relevant part, to exclude any claim for damages for which a full and complete answer was not provided in response to interrogatory twenty-two. In support of their motion defendants cited *Gordon v. Noel*, 356 N.W.2d 559, 564 (Iowa 1984) and its

holding that a party is entitled to be informed of the plaintiff's damages claims. On Thursday June 22, 2006, two business days before the trial was scheduled to begin, Wade supplemented her discovery responses, including a response to interrogatory twenty-two.¹ The supplemental response to interrogatory twenty-two reflected she was now seeking \$589,650.26 in total damages. She listed the \$14,822.26 in past medical bills, plus \$300,000 in future medical bills, \$1,248 in lost wages, \$50,000 for past loss of function, \$10,000 for future loss of function, \$150,000 for past pain and suffering, \$50,000 for future pain and suffering, \$13,425 for automobile damages, and \$155 for a towing charge.

On June 22, 2006, the defendants filed a supplemental motion in limine requesting Wade be prohibited from making any claim for property damage to her vehicle, asserting that no such claim had been disclosed in a timely manner and any issue of property damage had previously been resolved in binding arbitration by the parties' respective insurance carriers. On June 26, 2006, the parties appeared for trial. After hearing oral arguments on defendants' motion in limine, the district court granted the motion and, citing *Gordon*, 356 N.W.2d at 564, ordered that Wade could "not claim any damages for past and future pain and suffering, past and future loss of function of mind and body, past and future loss of wages, future medical expenses, or automobile damages." After the order was entered Wade requested a continuance of trial so she could challenge

¹ The cover letter to the supplemental response is dated June 22. In its ruling on the defendants' motion in limine the trial court found that the supplemented answer to interrogatory twenty-two was faxed to defense counsel on June 23, which would be the last business day before trial.

the ruling through an interlocutory appeal.² The continuance was granted and Wade filed an application for interlocutory appeal. On October 19, 2006, the supreme court denied Wade's application.

A jury trial was subsequently held. In accordance with the court's ruling on the defendants' motion in limine the only issues for the jury were the necessity for and reasonableness of the past medical expenses incurred by Wade. Wade requested and was awarded the total amount of her medical expenses, \$14,822.36, which included \$3536.05 for the bed she claimed was medically necessary.

On appeal Wade contends the district court erred in granting the defendants' motion in limine and thus prohibiting her "from claiming damages for past medical expenses, past and future pain and suffering, past and future loss of function of the mind and body, past and future loss of wages, and future medical expenses." More specifically, she contends the defendants did have notice of all elements of her damages claim because she had described those elements to defense counsel on the phone and at the settlement conference,³ and she believed she had adequately complied with the defendants' requests to update and supplement her answers to interrogatories through those contacts. Wade argues that by granting the motion in limine and sanctioning her for failing

² In oral argument on appeal Wade asserted that her motion for continuance of trial was not limited to a request for time to apply for an interlocutory appeal. The record, including the trial court's ruling on the motion in limine, does not appear to support this assertion. The court's ruling states, in relevant part: "At the end of the court's oral ruling on the motion in limine, Plaintiff's counsel moved to continue the trial to allow Plaintiff's counsel to file an application for interlocutory appeal from the Court's limine order."

³ Nothing in the record supports these contentions.

to supplement her answers in writing rather than orally the court deprived her of her day in court, as the sanction was tantamount to granting a dismissal.

Initially, in examining Wade's issue statement as set forth in her appellate brief and quoted above we note that, contrary to her assertion, the district court in fact did not prohibit her from claiming damages for past medical expenses. She was allowed to claim and present evidence on past medical expenses, and the jury awarded her the full \$14,288.36 that she claimed. Thus, this portion of her stated issue is clearly without merit. In addition, although the district court did prohibit her from making any claim for automobile damages, she does not claim this as error in her issue statement and thus we need not determine whether the court erred in that part of its ruling.

Our review is for the correction of errors at law. Iowa R. App. P. 4.

A district court's order imposing discovery sanctions will not be disturbed unless the court abused its discretion. An abuse of discretion consists of a ruling which rests upon clearly untenable or unreasonable grounds. We must also be satisfied that substantial evidence supports any factual findings necessary to the court's exercise of its discretion.

Troendle v. Hansen, 570 N.W.2d 753, 755 (Iowa 1997) (citations omitted). A preclusive sanction order insures that a party will not be able to profit from its own failure to comply with discovery requests. *Schwarzenbach v. Schwarzenbach*, 446 N.W.2d 475, 479 (Iowa Ct. App. 1989). Where the sanction selected by the trial court is dismissal of the action, the court's range of discretion is narrowed. *Suckow v. Boone State Bank & Trust, Co.*, 314 N.W.2d 421, 425 (Iowa 1982). To justify dismissal of an action, a party's non-compliance must be due to willfulness, fault, or bad faith. *Id.*

“A party defending a claim is clearly entitled upon appropriate pretrial request to be informed of the amount of the claim.” *Gordon v. Noel*, 356 N.W.2d 559, 564 (Iowa 1984). This includes discovery of amounts claimed for separate elements of damages. *Id.* The purpose of Iowa Rule of Civil Procedure 1.503(4), requiring supplementation of discovery responses in certain circumstances, “is to avoid surprise and permit the issues to become both defined and refined before trial.” *Hariri v. Morse Rubber Prods. Co.*, 465 N.W.2d 546, 550 (Iowa Ct. App. 1990) (citing *White v. Citizens Nat’l Bank of Boone*, 262 N.W.2d 812, 816 (Iowa 1978)). “Discovery should expedite the disposition of litigation, by educating the parties in advance of trial of the real value of their claims and defenses, which may encourage settlements, and assure that judgments rest upon the real merits of causes. . . .” *Barks v. White*, 365 N.W.2d 640, 643 (Iowa Ct. App. 1985) (citation omitted).

For approximately one full year, in spite of two written requests from the defendants, Wade failed to supplement her interrogatory answers related to elements and amounts of damages, except insofar as she provided information concerning her past medical expenses by incorporating by reference medical billings produced in response to a request for production of documents. Wade contends the defendants had prior notice of all the elements of her claimed damages because she described her claims to the defendants on the telephone and discussed her claims at the settlement conference held by a district judge. However, the record before us on appeal contains no evidence in support of these contentions, and no evidence she ever provided the defendants with the

amounts she was claiming for separate elements of her damages, as required by the rules of civil procedure, until she listed elements and amounts totalling over one-half million dollars one or two business days before trial. It is the plaintiff's burden to provide this information to the defendant and the defendant is entitled to such information. *Gordon*, 356 N.W.2d at 564. Even presuming the elements of damages were discussed in passing as alleged by Wade, orally providing limited information during telephone calls and at settlement conferences cannot be seen as an adequate substitute for under-oath, written answers to interrogatories.

Furthermore, we do not believe the sanction imposed by the district court was tantamount to a dismissal as Wade argues. The sanction imposed by the court here allowed Wade to claim at trial the past medical expenses she had identified in timely and adequate discovery responses. Wade ultimately received the full amount she sought for those expenses.

We note the district court did conclude Wade's "woefully late supplementation, after two requests for supplementation more than three months previously, amount[s] to conduct evidencing willfulness." A finding of willfulness would justify dismissal as a discovery sanction. *Suckow*, 314 N.W.2d at 425. However, because the sanction imposed was not a dismissal we need not determine whether the district court was correct in finding Wade's violation of the discovery rules was willful.

Finally, Wade claims that the district court erred in imposing a sanction for failure to timely supplement answers to interrogatories, arguing that a prior order

compelling discovery is a prerequisite to the imposition of a sanction and no such prior order had been made. In support of her position she cites a case applying the Federal Rules of Appellate Procedure, *Mems v. City of St. Paul, Dep't of Fire & Safety Servs.*, 327 F.3rd 771, 779 (8th Cir. 2003). Wade does not, however, cite Iowa authority on the point that appears to be directly contrary to her position. See, e.g., *Sullivan v. Chicago & Northwestern Co.*, 326 N.W.2d 320, 324 (Iowa 1982) (acknowledging, in affirming imposition of sanctions for failure to timely supplement answers to interrogatories, the court's 1978 recognition that "[V]iolations of discovery rules alone may warrant sanctions."); *White v. Citizens Nat'l Bank of Boone*, 262 N.W.2d 812, 816 (Iowa 1978) (holding, in affirming imposition of sanction for failure to timely supplement answer to interrogatory, that "[T]rial courts have inherent power to enforce our discovery rules and have discretion to impose sanctions for a litigant's failure to obey them."); see also Iowa R. Civ. P. 1.517(4)(b) (providing that if a party fails to serve answers to interrogatories the court may make an order authorized by Iowa R. Civ. P. 1.517(2)(b)(2)); Iowa R. Civ. P. 1.517(2)(b)(2) (providing for an order "refusing to allow [a] party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence). We reject Wade's argument, as it ignores almost thirty years of Iowa authority contrary to her position.

For the reasons set forth above, we conclude the district court did not abuse its discretion in granting the defendants' motion in limine and imposing the sanction of prohibiting Wade from claiming damages for elements of damage she

had not identified in timely responses to discovery requests. The sanction selected by the district court was one that would prevent Wade from profiting from her failure to timely and adequately respond to the interrogatories, and was reasonable under the circumstances of the case.

AFFIRMED.