

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 22, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-3312-FT
STATE OF WISCONSIN**

Cir. Ct. No. 02CV000480

**IN COURT OF APPEALS
DISTRICT IV**

REBECCA SONNENBERG,

PLAINTIFF-APPELLANT,

V.

ALLSTATE INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County:
DALE T. PASELL, Judge. *Affirmed.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Rebecca Sonnenberg appeals an order dismissing her personal injury action as a sanction for discovery violations. We affirm for the reasons discussed below.

BACKGROUND

¶2 Sonnenberg filed suit alleging that her back and neck had been injured in an automobile accident with a vehicle insured by Allstate Insurance Company. Defense counsel scheduled Sonnenberg for an Independent Medical Examination (IME) but she missed the appointment because she had to take her boyfriend to the emergency room that day. The IME was rescheduled but plaintiff's counsel failed to advise Sonnenberg that the location had been changed. Plaintiff's counsel then drove Sonnenberg to the wrong location on the scheduled date, resulting in a second missed IME appointment.

¶3 Allstate moved for sanctions based on the two missed IMEs. The trial court ordered Sonnenberg to appear at an IME to be scheduled by Allstate, advising her if she did not do so the case would be dismissed with prejudice. Allstate scheduled the exam to be performed at an office located in Eau Claire. Plaintiff's counsel sent a letter stating that Sonnenberg "would not be able to go to Eau Claire," and asking to have the exam rescheduled in La Crosse, or Bloomington, Minnesota, where Sonnenberg had moved. Allstate moved to dismiss based on Sonnenberg's failure to comply with the trial court's order, and the trial court granted the motion.

DISCUSSION

¶4 Dismissal of a case is an extreme sanction which should only be applied in cases of egregious conduct. *Johnson v. Allis-Chalmers Corp.*, 155 Wis. 2d 344, 351, 455 N.W.2d 657 (Ct. App. 1990). However, we review the trial court's decision to impose a sanction and its choice of sanction under the erroneous exercise of discretion standard. *Teubel v. Prime Dev., Inc.*, 2002 WI App 26, ¶15, 249 Wis. 2d 743, 641 N.W.2d 461. In order to show that a dismissal

based upon the violation of a court order was a misuse of discretion, an appellant must show “a clear and justifiable excuse” for failing to comply with the order. *Johnson*, 155 Wis. 2d at 351 (citation omitted).

¶5 Sonnenberg has not persuaded this court that she had a clear and justifiable excuse for violating the trial court’s order that she appear at the third medical exam scheduled by the defendant. The trial court’s findings that the date chosen by the defense was the only available pretrial date, that Sonnenberg had ample notice of the time and place of the exam, and that she could have made arrangements to appear were supported by the record. Sonnenberg’s assertion that she should have had some input as to the time and place of the exam is contrary to the plain language of the trial court’s prior order. The trial court could reasonably conclude that Sonnenberg’s decision not to appear as ordered, particularly after missing two previously scheduled exams, warranted dismissal of her action.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

