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DISTRICT II

April 25, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2017AP1287

Wichita Falls Investors, LLC v. G and R Integration Services, Inc.
(L.C. # 2015CV1382)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Wichita Falls Investors, LLC, appeals from an order dismissing with prejudice its complaint against G and R Integration Services, Inc. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See*

WIS. STAT. RULE 809.21 (2015-16).¹ We conclude that the circuit court properly dismissed Wichita Falls' complaint. Accordingly, we affirm its order.

Wichita Falls is a commercial landlord that filed suit against its former tenant, G and R, in July 2015. It alleged that G and R caused substantial damage to the parking lot of the property it rented.

As the case progressed, G and R experienced difficulties in obtaining discovery from Wichita Falls. This was due, in part, to Wichita Falls' failure to make its witnesses available for deposition. It was also due to Wichita Falls' failure to respond to interrogatories and requests for production of documents.

G and R filed a motion to compel discovery, which the circuit court granted. G and R also sought attorney fees for the motion, which the court awarded as a sanction. Although the court's order of September 2, 2016, directed Wichita Falls to pay the sanction within thirty days, Wichita Falls failed to do so.

Eventually, in February 2017, G and R moved to dismiss the case for failure to prosecute. The motion cited both Wichita Falls' failure to produce witnesses for deposition despite numerous requests and its failure to pay the ordered sanction.

The circuit court held a hearing on G and R's motion. There, the court admonished Wichita Falls for its behavior, telling its counsel the following:

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

It's abhorrent to me that we're at this point, two years down the road, ... and we've accomplished two depositions when they've been requested. It's even more troubling to me that you and your client have intentionally, as far as I can tell, ... failed to be compliant with an order of [the previous judge] who sat in this court and issued an order in September of last year to pay sanctions, and it hasn't been paid.

Ultimately, the circuit court gave Wichita Falls another chance to prosecute its case. However, it awarded another sanction to G and R for fees and costs associated with the delays in discovery. It then directed Wichita Falls to pay the ordered sanctions by April 4, 2017, or "this case is dismissed." Wichita Falls' counsel confirmed that he "[u]nderstood" the court's order.

On April 5, 2017, G and R moved to dismiss the case on the ground that it still had not received payment for the ordered sanctions. Wichita Falls objected to the request, noting that the payment was in the mail.² The circuit court granted G and R's motion and dismissed Wichita Falls' complaint with prejudice.

Wichita Falls subsequently filed a motion for reconsideration of the dismissal. Following a hearing on the matter, the circuit court denied the motion. In doing so, the court cited Wichita Falls' "pattern of conduct" throughout discovery and its "history of disregard of [c]ourt orders." This appeal follows.

The decision to impose sanctions, including dismissing a complaint with prejudice, is reviewed under an erroneous exercise of discretion standard. *See Lister v. Sure-Dry Basement Sys., Inc.*, 2008 WI App 124, ¶10, 313 Wis. 2d 151, 758 N.W.2d 126. We will uphold a circuit court's decision if it "has examined the relevant facts, applied a proper standard of law, and,

² According to Wichita Falls' counsel, he instructed his legal assistant to deliver the payment before the April 4, 2017 deadline; however, the assistant mistakenly placed it in the mail instead.

using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.”
Id. (citation omitted).

Dismissal of a complaint is warranted for egregious conduct without any clear and justifiable excuse. *See Selmer Co. v. Rinn*, 2010 WI App 106, ¶35, 328 Wis. 2d 263, 789 N.W.2d 621. The circuit court need not make an explicit finding of egregiousness as long as the facts support such a finding. *Id.*, ¶36. Failure to comply with court orders without a clear and justifiable excuse constitutes egregious conduct. *See Industrial Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶43, 299 Wis. 2d 81, 726 N.W.2d 898.

On appeal, Wichita Falls contends that the circuit court erred in dismissing its complaint against G and R. It asserts that the court did not provide reasoning for the decision. It further asserts that its failure to pay the ordered sanctions by the April 4, 2017 deadline was the result of excusable neglect and did not rise to the level of egregious conduct.

We are not persuaded by Wichita Falls’ arguments. Here, the circuit court’s reasoning is reflected at both the hearing on G and R’s motion to dismiss for failure to prosecute and the hearing on Wichita Falls’ motion for reconsideration. That reasoning makes clear that the decision to dismiss was not based upon a one-time clerical error resulting in delayed payment. Rather, it was based upon Wichita Falls’ “pattern of conduct” throughout discovery, which the court deemed “abhorrent,” and its “history of disregard of [c]ourt orders.” These facts support a finding of egregious conduct. Consequently, we are satisfied that the court properly exercised its discretion in dismissing Wichita Falls’ complaint.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals