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DISTRICT I

April 18, 2023

To:

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Circuit Court Judge
Electronic Notice

Vicki L. Arrowood
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Hon. David C. Swanson
Circuit Court Judge
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Clerk of Circuit Court
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Mary L. Ratzel
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Raven Griffin
PO Box 12773
Milwaukee, WI 53212

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

2020AP766

Raven Griffin v. Shirley Ferguson
(L.C. ## 2018SC26088 and 2019CV3438)

Before Brash, C.J., Donald, P.J., and Dugan, 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).

Raven Griffin, *pro se*, appeals from an order of the circuit court that dismissed her consolidated cases as a sanction for egregious behavior. Based upon our review of the briefs and record, we conclude at conference that this appeal is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ The order is summarily affirmed.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Griffin entered into a lease agreement for a property owned by Joseph Bryce Ferguson and his then-wife Nanthakan Hamachuta, to begin July 1, 2016. Because Joseph and Hamachuta were out of the country at the time, Joseph’s parents, Shirley and Carl Ferguson, acted as agents.

Griffin paid a \$1,000 deposit and moved in on June 30 or July 1, 2016. However, she made no further payments, including the first month’s rent that was supposed to be paid before she took possession of the premises. After some phone calls, including one with Shirley, Griffin agreed to vacate the property after a final walkthrough on July 7, 2016.

Shirley and Carl completed the walkthrough and offered Griffin a check for \$806.05, representing the \$1,000 security deposit minus seven days of rent. Griffin refused the check and allegedly began threatening to remove property that was not hers, like the appliances. A physical altercation ensued, resulting in alleged injuries to all three people and in Griffin’s arrest.² On July 10, 2016, a no contact order was issued, barring Griffin from the premises, except with police supervision to remove her belongings. Griffin never returned to the property.

In July 2018, Griffin filed the underlying small claims case against all four individuals (“the defendants”³), seeking judgment for a “claim for money” of \$10,000 and “tort/personal injury” of \$5,000, plus interest and costs. In January 2019, the court commissioner conducted a

² A jury acquitted Griffin on the charge stemming from the incident.

³ All four defendants were originally represented by Attorney Joseph Cincotta. Presently, Joseph and Hamachuta remain represented by Attorney Cincotta, while Shirley and Carl are represented by Attorney Mary Lee Ratzel.

hearing and rendered an oral decision in Griffin’s favor for \$2,000 plus costs.⁴ Both sides filed a demand for trial to the circuit court.

On May 1, 2019, Griffin brought another action against the defendants, “pursuant to the Civil Rights Act,” in which she demanded one million dollars for “willful discrimination, disparate treatment, and a direct violation of the federal and state laws[.]” In July 2019, the circuit court held a hearing on a summary judgment motion filed by the defendants. The circuit court denied the motion, concluding that there appeared to be genuine issues of material fact—largely because of unresolved credibility questions—relating to at least a potential claim of constructive eviction. Defendants’ counsel then asked the court if it would accept consolidation of the large claims case with the small claims case. Griffin initially objected, but later told the judge that “if you handle large claims cases then I have no problem with it being consolidated[.]” The cases were consolidated under the small claims case number in August 2019.

At a hearing on October 23, 2019, Shirley and Carl’s attorney personally served Griffin, at a hearing, with a set of interrogatories and demand for documents. When Griffin failed to timely return her answers within thirty days, as required by WIS. STAT. § 804.08(1)(b), counsel sent her a letter on December 3, 2019. Griffin then returned the interrogatories, backdated to November 11, 2019, objecting to nearly all of the questions. On December 31, 2019, counsel sent Griffin a notice of deposition scheduled for January 17, 2020.

⁴ There is no transcript from these proceedings in the record but based on the amount of damages, it appears that the court commissioner concluded Shirley and Carl had wrongfully withheld the full security deposit and awarded Griffin double damages. *See* WIS. STAT. § 100.20(5); *see also Paulik v. Coombs*, 120 Wis. 2d 431, 436-37, 355 N.W.2d 357 (Ct. App. 1984). We note, however, that Shirley averred that the court commissioner asked her only one question—whether she had evicted Griffin—and refused to hear any other testimony from her or Carl.

On January 2, 2020, Shirley and Carl filed a “motion to dismiss and motion for summary judgment.” The motion asked the circuit court to dismiss those of Griffin’s claims that were “difficult to follow and represent claims that should be dismissed because no relief can be granted” and sought summary judgment on the remaining claims. A hearing was scheduled for January 22, 2020.

On January 3, 2020, Shirley and Carl filed a motion to compel discovery, asking the circuit court to order Griffin to “to provide responsive answers to the discovery requests.” Also on January 3, Joseph and Hamachuta filed their own motion for summary judgment and joined Shirley and Carl’s motions. A hearing on these motions was scheduled for February 28, 2020.

On January 21, 2020, Shirley and Carl filed a “motion to dismiss on the merits for repeated failure to comply with discovery.” Joseph and Hamachuta later joined this motion by letter. The motion alleged, among other things, that Griffin had failed to appear for the deposition and that she refused to narrow her issues sufficiently for the defense to pinpoint any potentially viable claims and mount a defense.

On January 22, 2020, at the hearing originally scheduled for Shirley and Carl’s motion to dismiss and for summary judgment, electronic circuit court docket entries⁵ reflect that the court stated it would hear all pending motions at the previously scheduled February 28, 2020 hearing. The circuit court also directed Griffin to respond to the “newly filed motion to dismiss only” no later than February 17, 2020. However, Griffin did not file a response to the motion to dismiss.

⁵ There is no transcript of the January 22, 2020 hearing in the record.

On February 28, 2020, the circuit court heard arguments on the pending motions. At the close of the hearing, the circuit court told the parties it would review all of the pending submissions and issue a written decision. On March 25, 2020, the circuit court entered a written decision granting the motion for sanctions, finding Griffin’s “noncompliance with discovery rules to be egregious, in bad faith, and that her conduct interferes with the orderly administration of justice” and dismissing Griffin’s claims with prejudice.⁶ Griffin appeals.

Griffin identifies several issues in her appellant’s brief. As an initial matter, we note that some of these issues stem from Griffin’s belief that the circuit court spontaneously “convert[ed] the summary judgment to an investigative adjudicative ‘motion to dismiss’ decision” without notice, contrary to WIS. STAT. § 802.06(2)(b).⁷ However, the record reflects that Griffin was served with the motion to dismiss as a sanction and that the circuit court had previously instructed Griffin to respond to that specific motion. There is nothing to support Griffin’s assertion that she lacked notice of the dismissal motion. Further, while Griffin also complains that the circuit court never discusses the summary judgment standard of review, the court did not reach the summary judgment motion because it dismissed the case as a sanction instead.

The only issue before this court, therefore, is whether the circuit court erred when it dismissed Griffin’s claims as a sanction for egregious behavior. Circuit courts have the power

⁶ The circuit court also dismissed all remaining motions and counterclaims as moot.

⁷ WISCONSIN STAT. § 802.06(2) describes defenses that can be raised by motion rather than in a responsive pleading. Section 802.06(2)(b), provides, in relevant part, that if, on a motion to dismiss for failure to state a claim upon which relief can be granted, “matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment ... and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion[.]”

This statute is inapplicable to a motion to dismiss as a discovery sanction.

“to impose dismissal as a sanction for litigation misconduct.” See *Schultz v. Sykes*, 2001 WI App 255, ¶9, 248 Wis. 2d 746, 638 N.W.2d 604. Because dismissal is a harsh sanction, “the supreme court has held that dismissal is proper only when the plaintiff has acted in bad faith or has engaged in egregious misconduct.” *Id.*

We review the circuit court’s decision to impose sanctions for an erroneous exercise of discretion. See *id.*, ¶8. This means we will affirm the circuit court’s decision “if it examined the relevant facts, applied a proper standard of law, and reached a reasonable conclusion.” See *id.* The question is not whether we would have imposed the same sanction, but whether the circuit court exceeded its discretion in imposing the sanction it did. See *id.*

“[F]ailure to comply with circuit court scheduling and discovery orders without clear and justifiable excuse is egregious conduct[.]” *Garfoot v. Fireman’s Fund Ins. Co.*, 228 Wis. 2d 707, 719, 599 N.W.2d 411 (Ct. App. 1999) (citation omitted). This is reflected in the discovery statutes, which provide that if a party “fails (a) to appear before the officer who is to take the party’s deposition, after being served with a proper notice, or (b) to serve answers or objections to interrogatories submitted under s. 804.08, after proper service of the interrogatories” then the circuit court “may make such orders in regard to the failure as are just, and among others, it may take any action authorized under sub. (2) (a) 1., 2. and 3.” See WIS. STAT. § 804.12(4). The authorized sanctions include “[a]n order ... dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party[.]” See § 804.12(2)(a)3.

We first review the circuit court’s conclusion that Griffin’s conduct was egregious. See *Industrial Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶42, 299 Wis. 2d 81, 726 N.W.2d 898. Here, the circuit court made extensive findings regarding Griffin’s conduct. It noted that

she had “failed to respond to Defendants’ interrogatories and requests for production of documents” because her responses were both untimely and inadequate. For instance, although Griffin claimed to have suffered physical injury, she invoked a non-existent privilege to avoid “identify[ing] each doctor, hospital, chiropractor, or other health care provider who has examined [her] for any condition during the ten years preceding the date of the alleged incident.” In short, the circuit court found that Griffin’s discovery responses were “wholly insufficient as she erroneously used objections to withhold discoverable information, and that she thus has egregiously failed to comply with discovery rules.”

The circuit court further found that Griffin “has acted in bad faith” because she “objects to providing any information about the incident that occurred ... [and] refuses to describe the incident that gives rise to her claim, refusing to delineate what happened and the individuals involved.” This, the circuit court concluded, “establishes a level of uncooperativeness that can only be described as bad faith.”

The circuit court also determined that Griffin “failed to comply with discovery by failing attend a scheduled deposition.... [She] did not provide defense counsel with any advance communication that she would not be appearing.” Thus, the circuit court commented, Griffin’s “failure to attend her deposition and failure to provide any notice or reason⁸ for her absence are more examples of her egregious and repeated failures to comply with discovery rules.”

In sum, the circuit court determined that Griffin:

⁸ Presumably, the court means any legitimate reason for her absence; Griffin said she did not attend the deposition because she had not received a witness fee for her appearance.

has been spectacularly uncooperative. Her responses to Defendants' interrogatories consist almost entirely of objections, and she has refused to be deposed. There is simply no way for this Court to "orderly administer justice" in a case where the Plaintiff refuses to follow standard discovery rules and procedures Based on this record, the Court finds [Griffin's] noncompliance with state and local discovery rules to be egregious and that she has acted in bad faith. She has persistently failed to comply with discovery and has been wholly uncooperative throughout the course of this litigation.

Griffin refutes none of these findings in her appellant's brief, although she perplexingly asserts that "[t]here is no entry or indication that the appellant failed to comply with or act in an egregious manner or 'in bad faith' to a 'court order'" despite a record to the contrary.

Griffin has also failed to file a reply brief to refute any of respondents' arguments. She is therefore deemed to have conceded the issues. *See Barnes v. WISCO Hotel Gr.*, 2009 WI App 72, ¶25, 318 Wis.2d 537, 767 N.W.2d 352. We note, however, that even without Griffin's procedural concessions, the circuit court's decision more than adequately reflects a proper exercise of discretion⁹ in deciding to dismiss Griffin's case as a sanction. None of the other issues Griffin raises are before the court in this appeal.

Therefore,

⁹ Griffin had provided only a post office box as her contact information; she refused to provide a phone number, street address, or email address. She takes issue with the circuit court saying she had refused to provide contact information and complains that the circuit court punished her for not registering as an electronic filer and for "not having a phone number (due to poverty and displacement)."

Griffin identifies no point in the record where she informed the court that she was not refusing to provide additional contact information, but rather, she did not have those types of information to provide. In any event, it is clear that Griffin's failure to provide alternate modes of contact is the least significant reason for the circuit court's imposition of sanctions, and the other reasons more than adequately support the circuit court's discretionary decision.

IT IS ORDERED that the judgment is summarily affirmed. *See* 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