2017 IL App (2d) 160220-U
No. 2-16-0220
Order filed February 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DIANE SCHREINER,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-L-188
	)	
CHALLENGER MANUFACTURING, INC.,	)	Honorable
and JAMES COXWORTH,	)	Robert B. Spence, Keith F. Brown,
	)	Thomas Mueller, and Mark A. Pheanis
Defendants-Appellants.	)	Judges, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in setting the amount of sanctions against the plaintiff's attorneys for a discovery violation.

¶ 2 The instant appeal arises from the order of the circuit court of Kane County imposing sanctions upon the attorneys of the plaintiff, Diane Schreiner, for violating discovery. On appeal, the defendants, Challenger Manufacturing, Inc., and James Coxworth, argue that the amount of the sanction was insufficient and that the trial court should also have imposed a monetary penalty. We affirm.

¶ 3 BACKGROUND

¶ 4 On March 27, 2009, the plaintiff filed a three-count complaint against Challenger Manufacturing (the company or the defendant) and its president, James Coxworth. The complaint alleged that, on January 2, 2008, the plaintiff accepted the defendant's offer to work as vice president of operations. On January 23, 2009, she was terminated. The plaintiff sought severance pay of $185,000 plus an unpaid bonus of $55,500. On May 8, 2009, the defendants filed an answer to the plaintiff's complaint. The defendants denied that the plaintiff (1) performed her duties under the contract; (2) was terminated without cause; and (3) was entitled to any relief.

¶ 5 On September 8, 2011, the plaintiff's counsel submitted the plaintiff's third supplemental answers to the defense interrogatories. In those answers, the plaintiff's attorneys indicated that their expert, Robert Kleeman, opined that the plaintiff's efforts were in part responsible for the company's improved financial results in 2008.

¶ 6 Based on the supplemental answers, the defendants deposed Kleeman for a second time, on January 30, 2012, to determine the basis for his opinion. At the deposition, Kleeman stated that his opinions should be taken "verbatim and not in piecemeal where [he] said that the company's financial improvement was based upon several factors, including plaintiff's performance." When asked for the basis of his opinion, he declined to answer, stating that he had already given those answers at his first deposition and he had not prepared himself to answer those questions again. The trial court granted a defense motion to compel Kleeman to attend a third deposition to answer questions about the plaintiff's job performance and Kleeman's re-calculation of the company's financial performance by eliminating the amount of its bad debt.

¶ 7 After Kleeman's second deposition, the plaintiff disclosed a letter Kleeman had prepared on September 7, 2011. (This letter was authored a day before the plaintiff's counsel submitted

the plaintiff's third supplemental answers to the defense interrogatories). The letter stated that the company's financial statement did not disclose evidence of any financial mismanagement by the plaintiff. The letter made no reference to the plaintiff's job performance improving the company's finances.

¶ 8 On July 24, 2012, Kleeman, in his third deposition, stated that it was impossible for him to say that the plaintiff had contributed to the improvement of the company's finances.

¶ 9 On August 30, 2012, the defendants filed a motion to bar Kleeman's testimony and for sanctions. The defendants sought an order "requiring plaintiff's counsel to reimburse the defendants for the attorney fees and expenses incurred in deposing Mr. Kleeman on January 30, 2012 and July 24, 2012." The defendants also requested imposition of a monetary penalty for a willful violation of discovery. The affidavit of defense counsel, dated August 29, 2012, and a supplement submitted at the trial court's direction itemized approximately 45 hours of time expended on these tasks, totaling $13,700 in legal fees, plus over $1,400 for the expenses of a court reporter. In response, the plaintiff argued that "it is not a discovery violation to disclose too much information" as it prevents surprise and cross-examination at trial would remedy any claimed violation.

¶ 10 On January 31, 2013, the trial court found that sanctions were appropriate pursuant to Supreme Court Rule 219 (eff. July 1, 2002), due to the conflict between the plaintiff's third supplemental answers and Kleeman's July 24, 2012, deposition testimony. The plaintiff filed a motion for rehearing. Following a hearing on the motion, the trial court explained that sanctions were warranted because there was an "inference that someone wrote something which was not a true fact" in the third supplemental answer. However, the trial court further found that Kleeman "kind of hung out [plaintiff's counsel] to dry" with his answers at his third deposition.

¶ 11 The trial court thereafter granted defense counsel's prayer for attorney fees. The trial court limited the amount of fees to the time the defendants spent deposing Kleemen at the July 24, 2012, deposition. The trial court did not fix an amount of sanctions in its order.

¶ 12 The defendants subsequently filed a motion asking for the trial court to reconsider its imposition of limited sanctions. The defendants argued that their attorneys spent 45 hours discovering the basis (or lack thereof) for the opinions disclosed in the plaintiff's third supplemental expert witness disclosure.

¶ 13 On December 5, 2013, the trial court denied the defendants' motion to reconsider and set the sanction award at $600. In so ruling, however, the trial court indicated that it would reconsider its ruling at the end of the proceedings. The trial court further stated that, pursuant to Rule 304(a) (eff. Feb. 26, 2010), its ruling was final and appealable. The defendants then filed a timely notice of appeal.

¶ 14 On December 26, 2014, this court dismissed the defendants' appeal. *Schreiner v. Challenger Manufacturing, Inc.*, 2014 IL App (2d) 131064-U, ¶ 34. We explained that, although the trial court's order included language pursuant to Rule 304(a), its ruling was not final because it indicated that it intended to revisit its finding at the end of the proceedings. *Id.*

¶ 15 On remand, the parties resolved all issues except the issue of sanctions. The trial court did not modify its prior order. On March 16, 2016, the defendants filed a timely notice of appeal.

¶ 16 ANALYSIS

¶ 17 The defendants argue that the trial court erred in sanctioning the plaintiff's attorneys only $600 for their discovery violations. The defendants argue that they incurred approximately $13,000 in attorney fees due to the plaintiff's noncompliance with Supreme Court Rule 219(c).

The defendants therefore ask that we vacate the trial court's order imposing only limited sanctions on the plaintiff's attorneys and remand with directions that the sanctions be increased and that a monetary penalty be imposed for the willful violation of Rule 219.

¶ 18 Rule 219 addresses the consequences of refusing or failing to comply with discovery rules or orders. Subsection(c) of the rule specifies that if a party:

> "unreasonably fails to comply with [the discovery rules] or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere provided, such orders as are just, including, among others, the following:
>
> * * *
>
> an appropriate sanction, which may include * * * a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty." Ill. S. Ct. R. 219(c) (eff. July 1, 2002).

¶ 19 A sanction may be imposed regardless of whether omissions in discovery are intentional or inadvertent. *Boettcher v. Fournie Farms, Inc.*, 243 Ill. App. 3d 940, 948 (1993). "A trial court is vested with wide discretionary powers in pretrial discovery matters." *Nehring v. First National Bank in DeKalb*, 143 Ill. App. 3d 791, 796–97 (1986). Nonetheless, even if a court has determined that a party has not reasonably complied with discovery and that some sanctions are appropriate, the sanctions imposed must be just and proportionate to the offense. *Nehring*, 143 Ill. App. 3d at 803. A just order imposing sanctions for failure to comply with discovery is one which, to a degree possible, insures both discovery and trial on the merits. *Gonzalez v. Nissan North America, Inc.*, 369 Ill. App. 3d 460, 464 (2006). The purpose of providing sanctions for failure to comply with discovery rules is to promote the flow of discovery and not to punish a dilatory or noncomplying party. *Id.* The determination of an appropriate sanction is circumstance-specific. *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1052 (1998).

"Consequently, the review of such an order must necessarily focus upon the particular behavior of the offending party that gave rise to the sanction and the effects that behavior had upon the adverse party." *Id.*

¶ 20 Here, we cannot say that the trial court abused its discretion in setting the amount of sanctions at only $600. As noted above, the purpose of Rule 219 is to ensure that relevant evidence is produced, not that a guilty party is punished. Unlike many of the cases the defendants cite (*Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 110 (2004); *Buehler v. Whalen*, 70 Ill. 2d 51, 67 (1977); *Boettcher*, 243 Ill. App. 3d at 946-48; *In re Estate of Soderholm*, 127 Ill. App. 3d 871, 881 (1984)), there was no evidence that the plaintiffs failed to produce. Rather, the plaintiff provided inaccurate information in its supplemental answer regarding what its expert would testify to. The plaintiff argued that its supplemental answer should not be considered a discovery violation because any misrepresentations it made regarding its expert's opinions could be resolved during cross-examination at trial. In setting the sanction award at a relatively low amount, the trial court seems to have accepted the plaintiff's argument that the defendants did not need to spend as much time as they claimed they did trying to resolve the issue before trial. Accordingly, as the trial court's order indicates that it "impose[d] sanctions proportionate to the circumstances" (*Buehler*, 70 Ill. 2d at 67), we cannot say that its order was improper.

¶ 21 In so ruling, we note that the defendant relies upon several cases that pertain to Supreme Court Rule 137 (eff. July 1, 2013), not Rule 219. See *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1021-1025 (2004); *Nissenson v. Bradley*, 316 Ill. App. 3d 1035, 1040-1042 (2000); and *Walsh v. Capital Engineering and Manufacturing Co.*, 312 Ill. App. 3d 910, 914-919 (2000)). Supreme Court Rules 137 and 219 embrace different facets and dynamics of litigation and it would be unfair to consider Rule 137 sanctions in proceedings under Rule 219. *Locasto v. City*

of Chicago, 2014 IL App (1st) 113576, ¶ 33. This is because Rule 137 is penal in nature while Rule 219 is coercive in nature. *Id.* We also find the defendant's reliance on *Mitchell v. Peterson*, 97 Ill. App. 3d 363, 370-72 (1981), to be misplaced because that case did not discuss Rule 219 but rather involved the construction of an indemnity agreement.

¶ 22 Finally, we do not believe that the trial court abused its discretion in declining to impose a monetary penalty pursuant to Rule 219(c). As noted earlier, a trial court may impose a monetary penalty pursuant to Supreme Court Rule 219(c) only if the trial court finds the conduct to be willful. Ill. S. Ct. R. 219(c) (eff. July 1, 2002); *County Line Nurseries and Landscaping, Inc. v. Glencoe Park District*, 2015 IL App. 1st 143776, ¶ 42. Here, the trial court made no explicit finding that the plaintiff's conduct was willful. Rather, in finding that Kleeman had "kind of hung out [plaintiff's counsel] to dry" with his answers at his third deposition, the trial court suggested that Kleeman himself was somewhat responsible for the discovery violation. As we cannot say that the trial court's decision on this matter was erroneous, we will not disturb it.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 25 Affirmed.