

2018 IL App (1st) 171860-U

No. 1-17-1860

Order filed August 6, 2018

FIRST DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOZEFA STALICA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 16 M1 300489
)	
ELIZABETH B. BALDWIN, as Executor of the Estate of)	
Kenneth T. Baldwin, Deceased,)	Honorable
)	Catherine A. Schneider,
Defendant-Appellee.)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's grant of summary judgment to defendant is affirmed where plaintiff was properly barred from presenting any testimony or evidence and, therefore, no genuine issue of material fact existed.
- ¶ 2 Plaintiff Jozefa Stalica appeals the trial court's order granting summary judgment to defendant Elizabeth Baldwin, as the executor of the estate of Kenneth T. Baldwin (Baldwin),

deceased. Plaintiff argues the court improperly granted summary judgment to defendant as a sanction for plaintiff's failure to comply with court-ordered discovery. We affirm.

¶ 3 In March 2016, plaintiff brought this negligence action against Baldwin in the Municipal Department of the 1st District of the Circuit Court of Cook County to recover damages for injuries she suffered as the result of an automobile accident. After Baldwin died, the trial court, on June 28, 2016, granted plaintiff leave to file an amended complaint substituting the executor as the defendant. Both the original and amended complaints sought damages "not to exceed" \$50,000.

¶ 4 In August 2016, the trial court ordered that all discovery was to be completed by December 9, 2016. Defendant filed a notice to produce pursuant to Illinois Supreme Court Rules 213 and 237 on September 26, 2016. She requested the presentation of plaintiff for a deposition, the names and addresses of every witness to the incident, the name and address of any experts as well as their curriculum vitae and reports, all exhibits and demonstrative evidence, any photos and pictures of the scene of the occurrence, medical bills relating to the litigation, and any tax documents relating to any wage loss claim in the litigation.

¶ 5 Defendant filed a motion to vacate defaults and for leave to file an answer to plaintiff's amended complaint, which the court granted on October 11, 2016.¹ Defendant filed her answer to plaintiff's first amended complaint on October 14, 2016, denying all material allegations. In December 2016, after receiving no response to her notice to produce, defendant filed a motion to compel, requesting that the trial court compel plaintiff to answer all outstanding written discovery and sit for a discovery deposition. The court continued the motion to January 18, 2017.

¹ The record does not reflect when or why the court entered any default judgments.

On December 27, 2016, plaintiff's counsel withdrew by agreement and, on January 12, 2017, her new counsel filed his appearance.

¶ 6 On January 18, 2017, the court entered an order requiring that plaintiff answer all written discovery by February 15, 2017, and present herself for a deposition by March 15, 2017, pursuant to notice by defendant. The order stated:

“Failure to comply with the specific terms of this order will result in the [plaintiff] being barred from testifying and presenting any evidence at the arbitration and/or trial of this matter. The above stated sanction shall remain in effect until removed by Order of the Court upon motion by the party against whom the sanction applies.” (Emphasis in the original)

On the same day, the court also entered a discovery closure order requiring: “All discovery shall be completed by April 14, 2017, final” and striking a March 8, 2017, arbitration date.

¶ 7 Defendant filed a motion for summary judgment on March 10, 2017. She alleged plaintiff had failed to answer all outstanding written discovery by February 15, 2017, as ordered by the trial court and she was, therefore, by court order, barred from testifying and presenting any evidence at arbitration or trial. Defendant argued that, because plaintiff could not present any evidence or testimony, she could not meet her burden of proof in her action and summary judgment for defendant was therefore warranted.

¶ 8 On April 5, 2017, plaintiff filed a certificate of service averring that she delivered her answers to interrogatories on that date. There is no copy of the answers in the record. A few days later, she responded to defendant's motion for summary judgment, asserting defendant did not establish that there were no genuine issues of material fact and the summary judgment motion

was essentially a request for sanctions under Illinois Supreme Court Rule 219(c) for her failure to answer discovery, which would be too drastic an action. The trial court granted defendant's motion on May 11, 2017, entering summary judgment in her favor and striking a June 28, 2017, arbitration date.

¶ 9 Plaintiff appeals, arguing that the trial court erred in granting defendant's motion for summary judgment as a sanction for a discovery violation. She asserts that defendant's motion for summary judgment was "a request for sanctions against plaintiff for failure to answer discovery." Plaintiff acknowledges that Rule 219 authorizes the court to impose sanctions on a party who abuses or disregards discovery rules and procedures. She argues, however, that dismissal of a complaint as a sanction should be imposed only when a party's actions "demonstrate a deliberate, contumacious, or unwarranted disregard for the Court's authority" (citing *Wakefield v. Sears Roebuck and Company*, 228 Ill. App. 3d 220, 226 (1992)), which she claims she did not do.

¶ 10 Defendant responds that the record shows it filed its motion for summary judgment on the basis that plaintiff could not meet her burden of proof because she would not be permitted to present evidence to support her cause of action. It asserts it did not move for summary judgment as a sanction and the record shows the trial court did not enter summary judgment as a sanction. Defendant contends that, as plaintiff has presented no other basis for her appeal than that the grant of summary judgment was an improperly imposed sanction, summary judgment should be affirmed.

¶ 11 Plaintiff mischaracterizes defendant's motion for summary judgment as a motion for sanctions. The record reflects defendant did not move for sanctions and the trial court did not

enter summary judgment in favor of defendant as a sanction against plaintiff. Rather, the court imposed the discovery sanction against plaintiff under a self-executing order barring plaintiff from presenting evidence or testimony at arbitration or trial if she failed to comply with the discovery deadlines set forth in the order. Plaintiff did not comply with the order and was, therefore, barred from presenting evidence or testimony. She did not request that the sanction be removed. The grant of summary judgment to defendant was the natural result of plaintiff's resulting inability to present evidence proving any element of her case. For the following reasons, we find the court did not err in imposing the discovery sanction against plaintiff and granting summary judgment to defendant.

¶ 12 As plaintiff points out, Illinois Supreme Court Rule 219(c) authorizes the trial court to impose a sanction upon any party who unreasonably refuses to comply with any provisions of the discovery rules or any order entered pursuant to these rules. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). However, neither party addresses the fact that Illinois Supreme Court Rule 222 governs the discovery procedures in plaintiff's case, and Rule 222(g) mandated imposition of the discovery sanction imposed here.

¶ 13 Rule 222 provides for limited and simplified discovery in certain cases and applies, *inter alia*, to "all *** civil actions seeking money damages not in excess of \$50,000 exclusive of interests and costs." Il. S. Ct. R 222(a). It governs discovery in all cases to which it applies. *Kapsouris v. Rivera*, 319 Ill. App. 3d 844, 850 (2001). When Rule 222 applies, the parties must comply with its limited and simplified discovery rules, rather than with general discovery rules set forth elsewhere in the Illinois Supreme Court Rules.² *Id.* at 850. In her complaint and

² Rule 222(a) provides: "[e]xcept as otherwise specifically provided by this rule, the general rules governing discovery procedures remain applicable to cases governed by this rule." Il. S. Ct. R 222(a).

amended complaint, plaintiff consistently sought damages “not to exceed” \$50,000. Therefore, Rule 222 applies to plaintiff’s action and controls the discovery procedures in her case.

¶ 14 Rule 222(c) sets forth the following deadlines for the completion of discovery:

“The parties shall make the initial disclosure required by this rule as fully as then possible in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint *** unless the parties otherwise agree, or for good cause shown, if the court shortens or extends the time.” Il. S. Ct. R 222(c).

¶ 15 Rule 222(g) requires that, “[i]n addition to any other sanction the court may impose, the court *shall* exclude at trial any evidence offered by a party that was not timely disclosed as required by this rule, except by leave of court for good cause shown.” (Emphasis added.) Ill. S. Ct. R. 222(g). Use of the word “shall” demonstrates a mandatory intent. *Grady v. Marchini*, 375 Ill. App. 3d 174, 178 (2007). Therefore, Rule 222(g) mandates that the trial court exclude at trial any evidence not timely disclosed pursuant to the rule, unless the party receives leave of court for good cause shown. *Stemple v. Pickerill*, 377 Ill. App. 3d 788, 789 (2007).

¶ 16 Here, the trial court entered an order requiring plaintiff to answer all written discovery by February 15, 2017, and present herself for a deposition by March 15, 2017. The order clearly set forth the Rule 222(g) sanction for failure to comply with these deadlines: plaintiff would be barred from testifying or presenting any evidence at arbitration or trial unless, on her motion, the court removed the sanction. Plaintiff failed to comply with the court-ordered deadline when she did not file her answers to written discovery by February 15, 2017. Therefore, under Rule 222(g), the court was required to bar her from presenting any evidence at trial not timely

disclosed unless she filed a motion setting forth good cause for why the sanction should not be imposed. Plaintiff did not move to extend the discovery date or request removal of the sanction. Therefore, there was no basis, let alone good cause, for the trial court to alter the mandatory sanction and plaintiff was properly barred by court order from presenting evidence or testimony in her action.

¶ 17 Plaintiff argues that defendant waited for new counsel to be appointed before moving forward with its “motion for directed verdict [*sic*].” Plaintiff additionally argues she acted in good faith because her new counsel provided defendant with all the documents he received from initial counsel, but defendant rejected this submission because she “wished to dispose of the matter with a trial on the merits to the absolute detriment of the plaintiff.”³ Putting aside the fact that a trial on the merits was what plaintiff herself requested, these arguments are not supported by anything in the record and will not be considered on appeal. *Paluch v. United Parcel Service, Inc.*, 2014 IL App (1st) 130621, ¶ 23.

¶ 18 Plaintiff additionally argues that she was not at fault for the timing of her production of the documents and it was “purely the result of misunderstanding between counsel and the Court.” She asserts the trial court “did not explain the conflicting of [*sic*] orders entered on January 18, 2017, giving different closing dates for discovery.” However, the court’s orders were not conflicting: one set forth the discovery deadlines applicable to plaintiff (written discovery by February 15, 2017; presenting herself for a deposition by March 15, 2017) while the other set

³ Plaintiff does not explain what documents she allegedly produced and when she produced them. The record does contain an April 5, 2017, certificate of service averring that plaintiff delivered her answers to interrogatories on that date, which was after defendant filed its motion for summary judgment. However, the answers are not in the record and plaintiff neither references this notice in her brief nor points to any evidence in the record demonstrating that she made an attempt to comply with discovery.

forth the closing date for all discovery a month later (April 14, 2017). Further, if plaintiff was confused by the orders, she should have asked for clarification, not ignored the court's order.

¶ 19 Given that the court properly barred plaintiff from presenting evidence or testimony at trial, we affirm its grant of summary judgment to defendant as, without evidence, plaintiff cannot prove any element of her case. Summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits show there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291 (2000). A defendant moving for summary judgment may meet its initial burden of production by establishing that the plaintiff lacks sufficient evidence to prove an essential element of her cause of action. *Williams v. Covenant Medical Center*, 316 Ill. App. 3d 682, 688-89 (2000). In the same vein, a party opposing a motion for summary judgment must present a factual basis which would arguably entitle him to a judgment. *St. Paul Mercury Ins. v. Aargus Sec. Systems, Inc.*, 2013 IL App (1st) 120784, ¶ 57. Because plaintiff is barred from presenting any evidence in support of her claim, she cannot present a factual basis for any element of her negligence action. See *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 235-36 (2010) (to recover damages for negligence, plaintiff must prove that (1) defendant owed plaintiff a duty, (2) defendant breached that duty, and (3) the breach was the proximate cause of plaintiff's injuries). There is, therefore, no factual basis that would have entitled plaintiff to judgment in her favor, and the court properly granted defendant's motion for summary judgment.

¶ 20 Affirmed.