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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1931**

Joseph C. Honrud, et al.,
Respondents,

vs.

D. Peter LaCount,
Appellant,

Laurie Baukol,
Defendant.

**Filed July 16, 2018
Affirmed
Stauber, Judge***

Otter Tail County District Court
File No. 56-CV-15-3589

Robert L. Russell, Fergus Falls, Minnesota (for respondents)

Ross Nilson, Brudvik Law Office, P.C., West Fargo, North Dakota (for appellant)

Considered and decided by Kirk, Presiding Judge; Peterson, Judge; and Stauber,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

Landlords Joseph and Debra Honrud filed a complaint against tenants D. Peter LaCount and Laurie Baukol in Otter Tail County District Court. The complaint alleged breach of contract, nuisance, trespass, conversion, waste, and negligence. The Honruds moved the district court for default judgment against LaCount after he failed to comply with an order compelling discovery. The district court granted the motion, and LaCount now appeals, arguing that the district court clearly erred when it found that his failure to comply with the discovery order was part of a pattern of non-compliant conduct and failed to make any finding regarding the prejudice suffered by the Honruds. Because default was an appropriate sanction, we affirm.

FACTS

Landlords Joseph and Debra Honrud served their complaint on tenants D. Peter LaCount and Laurie Baukol in mid-October 2015, alleging breach of contract, nuisance, trespass, conversion, waste, and negligence. After a month and a half passed, both LaCount and Baukol had failed to file an answer, leading the Honruds to file an application for an administrative default judgment. The application sought \$354,894.02 worth of relief based on interest, costs and disbursements, and a trebling of \$117,589.05 for the damage to the rented premises, lost rent, and the cost of health problems brought on by having to clean the damaged premises. The district court, through its court administrator, issued a default judgment against LaCount and Baukol for the requested amount.

LaCount and Baukol moved to vacate the default judgment seven days after its entry. The district court granted the motion, concluding that the default judgment should not have been entered because the damages sought by the Honruds did not meet the requirements for an administrative default. The Honruds filed an amended complaint four-and-a-half months later, and LaCount and Baukol filed timely answers. The Honruds then served LaCount's attorney with interrogatories, requests for production of documents, and a request for admissions on March 20, 2017. LaCount responded a month later with incomplete answers.

LaCount failed to appear for his deposition, and his attorney spoke with the Honruds' attorney about rescheduling. But four days later, LaCount's attorney withdrew as his counsel. A little over a month later, the Honruds moved the district court to compel LaCount to provide complete discovery responses. The district court held a hearing on the motion, which LaCount failed to attend. The district court granted the motion to compel after finding that LaCount's discovery responses were "incomplete and evasive" and that he "willfully failed to appear for his properly noted deposition." The written order required LaCount to "re-submit, to plaintiffs, revised and complete written discovery responses on or before July 3, 2017" and to "appear for his . . . properly noted deposition." The order also included a warning that read,

**4. DEFENDANTS ARE HEREBY PUT ON
NOTICE THAT FAILURE TO COMPLY WITH THE
TERMS OF THIS ORDER MAY RESULT IN THE
FOLLOWING:**

....

C. AN ORDER...RENDERING A DEFAULT JUDGMENT.

On August 15, 2017, the Honruds' attorney wrote to the district court and alleged that LaCount had not complied with the order and asked for guidance on how to proceed. The district court responded and explained that the Honruds could move for default judgment against LaCount, but that it was reluctant to consider a default-judgment request against Baukol because of her then-recent civil commitment.

Three weeks later, LaCount, acting pro se, filed a motion that asked the court to dismiss the Honruds' waste claim and deny their equitable claims on the basis of the unclean-hands doctrine. The district court explained to LaCount in a written letter that it construed his request as a dispositive motion that was untimely but that the "timing and propriety" of the motion could be discussed at the upcoming pretrial conference.

LaCount appeared at the conference pro se. The district court stated that it did not review LaCount's motion because it was untimely. The Honruds requested that default judgment be entered against LaCount for his failure to comply with the court's order compelling him to resubmit his discovery responses. LaCount acknowledged that he was aware of the order compelling his response and that he failed to comply with the order. He also acknowledged that the order was accompanied with a warning that his failure to comply could result in a default judgment against him. The district court granted the Honruds' request for a default judgment, explaining to LaCount that he had "been given several chances to complete the discovery with the help of the attorney and on [his] own, and [he] failed to do that." LaCount argued that default judgment was inappropriate in light

of other possible sanctions; that part of the reason he did not respond was because he feared his response would “put [Baukol] on the hook for this entire thing,” which was “more than [he] could do”; and that he felt he had provided sufficient responses to the Honruds. The district court rejected LaCount’s arguments. He now appeals.

D E C I S I O N

LaCount argues that the district court improperly ordered default judgment against him. District courts may issue orders compelling discovery and imposing sanctions. Minn. R. Civ. P. 37.01, .02 (2017). Possible sanctions include default judgment if a party willfully and persistently fails to comply with a discovery order without justification or excuse. Minn. R. Civ. P. 37.02(b)(3). We will not disturb a district court’s discovery-related orders absent an abuse of discretion. *Frontier Ins. Co. v. Frontline Processing*, 788 N.W.2d 917, 922 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010). On the other hand, “the primary objective of the law” is to “dispose of cases on the merits,” and a default judgment completely bypasses that objective, making it, like a dismissal with prejudice, “the most punitive sanction.” *Firoved v. General Motors Corp.*, 277 Minn. 278, 283, 152 N.W.2d 364, 368 (1967); *see also Chicago Greatwestern Office Condo. Ass’n v. Brooks*, 427 N.W.2d 728, 730 (Minn. App. 1988). District courts therefore should impose default as a sanction “in only exceptional circumstances.” *Frontier*, 788 N.W.2d at 923.

When reviewing whether a district court has abused its discretion by imposing a discovery sanction, we look to see

- (1) if the court set a date certain by which compliance was required,
- (2) if the court gave a warning of potential sanctions for non-compliance,
- (3) if the failure to cooperate with

discovery was an isolated event or part of a pattern, (4) if the failure to comply was willful or without justification, and (5) if the moving party has demonstrated prejudice.

Id. at 923 (collecting cases). LaCount concedes that the district court provided a certain date for resubmitting his discovery responses and a warning of possible sanctions that included default, but challenges the existence of the remaining factors.

LaCount first argues that the district court improperly found that his failure to cooperate with the discovery requests was part of a pattern of conduct done willfully, without justification. We review findings of fact for clear error. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). “That is, we examine the record to see if there is reasonable evidence in the record to support the [district] court’s findings,” and, in conducting this analysis, we construe the evidence in the light most favorable to the verdict. *Id.* (quotation omitted). “To conclude that findings of fact are clearly erroneous, we must be left with the definite and firm conviction that a mistake has been made.” *Id.* (quotations omitted).

LaCount supports his argument with three points: he answered all of the Honruds’ discovery requests and was intending to supplement his responses to the request for production of documents; he thought his deposition was going to be rescheduled but it never was; and he failed to resubmit discovery responses because of his concern that Baukol would then be found in default and therefore have to bear the cost of an award for damages. But LaCount cites no authority that states an intention to supplement “incomplete and evasive” discovery responses over a month after the court-imposed deadline, an alleged misunderstanding about when a deposition would be scheduled, or a concern for a co-

defendant justifies a party's failure to cooperate with discovery requests. Further, the record supports the district court's pattern-of-conduct finding. The pattern began with the start of this lawsuit. It was only after an administrative default judgment was vacated that LaCount filed an answer. LaCount then responded to the Honruds' discovery requests with "incomplete and evasive" answers. *See* Minn. R. Civ. P. 37.01(c) ("For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer or respond."). LaCount next failed to show up for his deposition. He then failed to supplement his "incomplete and evasive" answers after the district court issued its order compelling him to resubmit meaningful responses to the discovery inquiries. LaCount clearly exhibited a pattern of recalcitrant conduct.

LaCount argues that we should not consider his failure to respond to the original complaint in determining whether the district court's pattern-of-conduct finding was appropriate because the district court did not consider that fact. But for findings of fact, we simply review the record to see if it contains any evidence to support the district court's findings. *See Rasmussen*, 832 N.W.2d at 797. And LaCount's failure to respond to the original complaint supports the district court's finding that he was engaging in a disruptive, non-compliant pattern of conduct. We therefore reject this argument.

LaCount next argues, citing *Brooks*, that the district court abused its discretion by ordering a default judgment because it did not find that the Honruds would be prejudiced if a default judgment were not ordered. In *Brooks*, Chicago Greatwestern Office Condominium Association sued its former president, Brooks, alleging that he misappropriated \$20,000. *Brooks*, 427 N.W.2d at 729. Representing himself pro se, Brooks

served an answer to the complaint. *Id.* Greatwestern then served its interrogatories and request for production of documents. *Id.* Brooks did not respond to the discovery request. *Id.* Greatwestern served Brooks with a notice of motion and motion to compel answers to the discovery requests. *Id.* The notice also listed a hearing date for the motion. *Id.* Brooks did not appear at that hearing, because, shortly before the hearing, Brooks sent unsigned, nonnotarized interrogatory answers to Greatwestern that he believed fully complied with Greatwestern's requests. *Id.* At the hearing, Greatwestern's attorney explained to the district court that it received unsigned, nonnotarized answers from Brooks. *Id.* The district court issued an order compelling Brooks to respond to the discovery requests within 10 days and explaining that failure to comply would result in a default judgment. *Id.* The notice said nothing about the interrogatories being signed or notarized. *Id.* Brooks did not provide signed and notarized discovery responses, and the district court entered a default judgment against him. *Id.* at 729-30.

We reversed for two independent reasons. *Id.* at 731. The first reason was because the “[district] court did not state its reasons for granting default judgment.” *Id.* We explained that “judicial review [was] very difficult” because the district court failed to state its rationale—particularly its rationale for the prejudice suffered by Greatwestern—and the parties argued over what the district court's rationale was. *Id.* at 731-32. The second reason reversal was required was because nothing in the record indicated that Brooks “knew that the interrogatory answers he delivered needed only to be signed and notarized for them to comply with the order.” *Id.* at 732. We noted that the order compelling discovery did not mention that Brooks' answers had to be signed and notarized, and concluded that “[t]he

lack of specificity in the order [did] not coincide with the overall tenor of sanctions cases, which mandate that a noncomplying party know precisely what he is to do to cure the discovery violation prior to use of the default sanction.” *Id.*

LaCount concedes that he knew what was required of him to comply with the district court’s order compelling him to resubmit responses to the Honruds’ discovery requests. Like the district court in *Brooks*, the district court did not make an explicit prejudice finding at the hearing on the Honruds’ motion or in its order for default judgment. But LaCount’s pattern of recalcitrant conduct that began at the start of this lawsuit and carried through to its end is unlike the *Brooks* defendant’s mere technical violation of discovery orders that acted as the impetus for the district court’s order of default. *See id.* The prejudice here is manifest. LaCount’s conduct acted as a complete blockade to this lawsuit’s progression. The Honruds were unable to develop their case, prepare witnesses, or develop a counter to any defense theory LaCount may have advanced. Simply put, LaCount pushed the limits too far. We do not reach the Honruds’ argument that LaCount’s appeal must fail for his failure to address the factors outlined in *Petrich v. Dyke*, 419 N.W.2d 833, 835 (Minn. App. 1988).

Affirmed.