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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A23-1453

A23-1820

Todd C. Dooley, et al.,
Appellants,

vs.

Jason R. Ross, et al.,
Respondents.

**Filed August 5, 2024
Affirmed
Smith, Tracy M., Judge**

Isanti County District Court
File No. 30-CV-21-723

Richard Dahl, Dahl Law Firm PA, Brainerd, Minnesota (for appellants)

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Minnesota (for respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge;
and Slieter, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In these consolidated appeals, appellants challenge the district court's (1) dismissal with prejudice of their complaint as a sanction for failing to comply with the court's order compelling discovery and (2) award of costs and disbursements to respondents as the prevailing parties. We affirm.

FACTS

These consolidated appeals arise from a dispute between two next-door neighbors and their respective businesses operating out of their homes. In December 2021, appellants Todd C. Dooley and Wyatt Excavating LLC sued their neighbors: respondents Jason R. Ross, JR Enterprise LLC, and Great Lakes Lumber Company Inc. Appellants asserted seven claims against respondents based on the following alleged facts: appellants arranged for respondents to sell sand to a third party in exchange for black dirt, and respondents agreed to, but failed to, compensate appellants for their services by equally splitting the black dirt with them; respondents failed to pay appellants for performing environmental remediation related to a pond on Ross's property; and respondents failed to pay appellants for laying an asphalt driveway on Ross's property.

The district court filed a scheduling order, requiring discovery to be completed by June 15, 2022, and dispositive motions to be heard by July 1, 2022, and setting trial for August 22, 2022.

On March 1, 2022, each of the respondents served each of the appellants with interrogatories and requests for production of documents. Under Minnesota Rules of Civil Procedure 33.01(b) and 34.02(c)(1), appellants' responses were due 30 days later.

On April 5, respondents' counsel sent a letter to appellants' counsel, informing him that the responses to their interrogatories and requests for production were due on March 31 and that respondents' counsel had not received any responses. On April 8, respondents filed a motion to compel appellants to respond to the discovery requests. On April 12,

appellants' counsel sent a letter, with the responses enclosed, to respondents' counsel stating that the responses had been mailed on March 28.

Appellants' responses consisted of a single set of answers to interrogatories and a single set of responses to requests for documents, on behalf of both appellants to all respondents. The combined answers to interrogatories did not differentiate between the interrogatories asked by Ross, those asked by JR Enterprise, and those asked by Great Lakes Lumber. In addition, in almost all of the interrogatory answers, appellants broadly directed appellants to documents produced, saying, "See also documents sent with responses to requests for production." The interrogatory answers were not signed under penalty of perjury as required by Minnesota Rule of Civil Procedure 33.01(d).

As for the requests for production of documents, appellants also responded together as to respondents collectively and did not differentiate between Ross, JR Enterprise, and Great Lakes Lumber. In addition, apart from objections, appellants responded to each document request by stating:

Subject to and without prejudice to these objections, [appellants] will produce any documents which are otherwise responsive to this request, have been identified by [appellants], are currently in [appellant's] possession, custody, and/or control, and have not already been made available to this propounding party via deposition subpoena, if any. See list of documents attached to this response. See also documents included on the Thumb Drive MAILED with this response.

The thumb drive included documents that were extremely blurry and unreadable as well as photographs that were extremely blurry.

On April 20, appellants served an amended set of answers to the interrogatories that were signed under oath but were still collective to respondents without differentiating between Ross, JR Enterprise, and Great Lakes Lumber.

On July 20, the district court issued an order granting respondents' motion to compel discovery (the July 20 order). The district court ordered appellants to (1) "produce legible documents and photographs . . . within seven days of this order"; (2) "verify [the] original interrogatory answers under penalty of perjury"; (3) amend several answers to interrogatories to fully respond to the question; and (4) "specifically identify documents used to answer each interrogatory, including page and paragraph numbers where applicable."

On August 3, respondents' counsel wrote a letter to appellants' counsel, stating that he had not, as of that date, received the discovery required by the July 20 order. On September 9, when appellants still had not complied, respondents filed a motion under Minnesota Rule of Civil Procedure 37.02 to sanction appellants by dismissing their complaint with prejudice. At that time, respondents had also filed a motion for summary judgment.

On September 22, the district court continued the case based on the request of appellants' counsel because of counsel's illness. The hearing on respondents' rule 37.02 motion and motion for summary judgment was continued to February 2, 2023. In addition, the district court amended the scheduling order to require all motions to be heard by April 7, 2023, and setting the trial date for May 15, 2023.

On February 3, 2023, appellants filed a response to respondents' rule 37.02 motion. Appellants claimed that Dooley takes iPhone pictures of his business records and throws away paper copies and that no legible copies of invoices or other exhibits existed; committed to sending a verification of interrogatory answers; committed that counsel would do "the best he can" to fully respond to the interrogatories and would "attempt again" to identify responsive documents as previously ordered by the district court. At a February 17 hearing on respondents' rule 37.02 and summary judgment motions, appellants' counsel stated, among other things, that the original interrogatory answers could not be verified because Dooley said that he could not verify the answers.

On April 17, the district court filed an order that denied respondents' motion for summary judgment and, as to the rule 37.02 motion, ordered: "[Appellants] shall comply with [the district court's] July 20, 2022 Order on [respondent's] Motion to Compel. [The district court] will reserve an award of sanctions against [appellants]." On April 24, after the motions deadline set in the scheduling order had passed, respondents filed a motion for sanctions, again asking the district court to dismiss the complaint with prejudice because of the discovery violations.

The trial date was again rescheduled, to July 24, 2023. On July 12, appellants finally served individualized sets of answers to interrogatories along with verifications of those answers. Appellants also produced some legible copies of paper invoices and some readable photographs of business records. On July 12, appellants served supplemental discovery responses, disclosing documents related to 803 phone calls between Ross and an inmate at a Minnesota correctional facility, and, on July 19, appellants served recordings

of those calls. and indicated that they intended to offer the calls as exhibits during the trial starting in three days.

On July 24, the trial date, the district court heard arguments on respondents' motion for sanctions for violating the July 20 order. Respondents argued that the district court should dismiss the case because appellants' actions to comply with the order were insufficient, were late, and prejudiced respondents in preparing for trial in the case. The district court took the matter under advisement and cancelled the jury trial pending its decision. The district court ultimately granted respondents' motion for sanctions, dismissing the amended complaint with prejudice. Appellants filed an appeal of the dismissal.

The district court then determined that respondents were the prevailing party and granted in part and denied in part respondents' application for the taxation of costs and disbursements. Appellants filed an appeal of the taxation of costs and disbursements. We consolidated the appeals.

DECISION

I. The district court did not abuse its discretion by dismissing the complaint as a sanction for discovery violations.

Appellants argue that the district court abused its discretion by dismissing their complaint as a sanction for failing to comply with the July 20 order compelling discovery. They argue that (A) the July 20 order was an abuse of discretion, (B) dismissal of the complaint based on failure to comply with the July 20 order was an abuse of discretion, and (C) the district court lacked authority to dismiss the complaint as a sanction because

respondents filed a motion for sanctions after the motions deadline in the district court's scheduling order. None of their arguments are persuasive.

A. The July 20 order was not an abuse of discretion.

The district court has wide discretion to issue discovery orders, and, absent a clear abuse of that discretion, its discovery orders will not be disturbed. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). "We review a district court's order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law." *Id.*

Appellants advance three arguments why the district court abused its discretion in issuing the July 20 order.

First, appellants contend that the district court abused its discretion by ordering that appellants must identify the source document, page, and paragraph number of the documents used to answer each interrogatory. Pursuant to court rule, if an answer to an interrogatory can be derived from business records,

and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records *A specification shall be in sufficient detail as to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.*

Minn. R. Civ. P. 33.03 (emphasis added). Although the rule does not provide explicitly that page and paragraph numbers must be specified, it contemplates a more specific response

than respondents' response of "See also documents sent with responses to requests for production." The district court acted within its wide discretion by requiring appellants to provide page and paragraph numbers in appellants' responses to the interrogatories.

Second, appellants argue that the district court should not have issued the July 20 order because respondents failed to satisfy their obligation under the rules of practice to meet and confer about the discovery dispute and to certify their compliance to the district court. *See* Minn. R. Gen. Prac. 115.10. The district court rejected the argument, concluding, "There is ample evidence to suggest [respondents] attempted to Meet and Confer in good faith," noting multiple letters exchanged between the parties before the motion hearing, and that respondents sufficiently certified their efforts. The record supports both determinations. Moreover, appellants cite no authority, nor are we aware of any, for the proposition that the failure to meet and confer precludes a district court from ordering a party to comply with discovery.

Finally, appellants argue that their verified amended answers to the interrogatories almost a year later rendered the lack of verification of their original interrogatories moot. Appellants cite no law that an amended answer to an interrogatory renders moot problems with the original answers to the interrogatory. And rule 33.01(d) provides no exceptions for the requirement that answers to interrogatories be signed under oath, even when amended answers to interrogatories are served.

In its 22-page order, the district court carefully evaluated appellants' discovery responses, specifically explained the deficiencies in those responses, and gave explicit

directions to appellants as to how to correct those deficiencies. The district court acted well within its broad discretion in issuing the July 20 order.

B. Dismissal of the complaint was not an abuse of discretion.

Appellants argue that the district court abused its discretion by dismissing their complaint with prejudice before trial as a sanction for failing to comply with the July 20 order.

Minnesota Rule of Civil Procedure 37.02(b)(3) permits a district court to impose sanctions—including dismissal of an action—against a party that fails to comply with a discovery order. A district court’s discovery-related orders are reviewed for an abuse of discretion. *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990).

Appellate courts have examined the following factors in determining whether a district court has abused its discretion in imposing discovery sanctions: (1) if the [district] court set a date certain by which compliance was required, (2) if the [district] 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.

Frontier Ins. Co. v. Frontline Processing Corp., 788 N.W.2d 917, 923 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010). The arguments that appellants advance correspond to the fourth and fifth factors.

Regarding the fourth factor, appellants advance three arguments why they did not willfully fail to comply with the July 20 order.

First, appellants contend that they could not “produce legible documents and photographs” as required by the July 20 order because, for his business records, Dooley took photos of bills and invoices on his cell phone and threw the paper originals away. The existence of original documents, however, is immaterial to the district court’s order to “produce *legible* documents and photographs.” (Emphasis added). The district court did not order appellants to produce original documents, but instead ordered them to produce readable documents. Nor does appellants’ argument explain why they waited until July 2023 to produce the legible documents and photographs.

Second, appellants argue that they did not willfully violate the requirement to verify their interrogatory answers because Dooley did not believe the answers accurately reflected what happened. It is problematic that appellants apparently provided inaccurate responses to interrogatories during discovery. Appellants also contend that, under the rules of civil procedure, they were not required to verify their answers because they filed objections to the interrogatories. The argument is without merit. Minnesota Rule of Civil Procedure 33.01 requires that a party “serve separate written answers or objections to each interrogatory” and directs that the answers “shall be signed under oath or penalty of perjury.” Minn. R. Civ. P. 33.01(b), (d). Appellants made objections to the interrogatories but also gave answers. Verification of the answers was plainly required under rule 33.01. Moreover, as explained above, the July 20 order was within the district court’s discretion, and appellants did not provide a verified copy of the original answers to the interrogatories as required by that order.

Third, appellants again argue that they did not willfully violate the district court's order because the Minnesota Rules of Civil Procedure do not require a party to identify the source document, page, and paragraph number of the documents used to answer each interrogatory. We rejected this argument above when we concluded that the district court acted within its discretion by requiring appellants to provide that information in their answers to interrogatories. It is also not clear that appellants provided respondents a "reasonable opportunity to examine . . . or inspect" the records when many of the photographs of documents were too blurry to decipher. Minn. R. Civ. P. 33.03. Because this factor measures the willfulness of noncompliance with the order, appellants' failure to comply with the requirement to provide the location of the documents was not inadvertent or justified.

Regarding the fifth factor, appellants argue that respondents suffered no prejudice based on appellant's discovery violations. "[T]he inability of [a responding party] to mount an effective defense due to [the appellant's] failure to comply with discovery and court orders is sufficient prejudice to warrant sanctions." *Frontier Ins. Co.*, 788 N.W.2d at 925. In seeking dismissal, respondents asserted that they were prejudiced in several ways. They could not identify which respondent or respondents were allegedly involved in which of appellants' claims because appellants failed to provide adequate answers to each respondent's interrogatories. They could not identify the documents to which appellants generally referred to in the answers to interrogatories, nor were they able to read the blurry photos of the documents if they had been able to identify the documents. They were disadvantaged by appellants' disclosure of some legible records and photographs just

weeks before trial and almost 12 months after the July 20 order. The district court determined that respondents were prejudiced, and that determination is supported by the record.

Appellants contend, though, that dismissal of the complaint was too severe a sanction and that the district court should have granted a continuance. The district court concluded:

This Court is sympathetic to [appellants'] Counsel's health issues over the last few years. However, the Court's July 20, 2022 Order addressing discovery issues has not been followed, even though the Court's memorandum specifically laid out what needed to be done. [Appellants have] not been compliant in answering interrogatories as required and providing the requested information, such as invoices, and verifying his answers. This matter was scheduled for trial on a date certain. Both parties should have been prepared and ready to proceed. [Appellants'] failure to provide discovery, after two motions to compel and a motion for sanctions, deprived [respondents] of the ability to be fully prepared for trial, to their prejudice. The court appreciates that dismissal is a serious sanction, but it is justified by [appellants'] failures.

On this record, and given the procedural history of the case, including that trial was set to begin, we see no abuse of discretion in the district court's choice of sanction. *See Comm'r of Pub. Safety*, 735 N.W.2d at 711 (noting that the district court has wide discretion to issue discovery orders).

C. The district court did not lack authority to impose sanctions on the ground that respondents' motion was untimely.

Appellants argue that the district court lacked authority to dismiss the complaint because respondents filed a motion for sanctions after the motions deadline set in the scheduling order.

Respondents filed a sanctions motion on April 24, 2023, which was after the scheduling order's April 7, 2023 deadline for motions to be heard. But respondents first filed a motion for sanctions in September 2022, and the district court filed an order on that motion on April 17, 2023, again ordering appellants to comply with the July 20 order and reserving an award of sanctions. When appellants still did not comply, respondents renewed their motion, and the district court reasonably considered it. And, even if respondents' April 24 motion was untimely under the district court's scheduling order, appellants cite no authority for the proposition that the district court lacked authority to consider it.¹

II. The district court did not abuse its discretion by awarding costs and disbursements to respondents.

Appellants argue that the district court abused its discretion by awarding costs and disbursements to respondents, contending that, because the case was dismissed, there was no prevailing party. We do not agree.

The prevailing party in a district court action “shall be allowed reasonable disbursements paid or incurred.” Minn. Stat. § 549.04, subd. 1 (2022); *see also* Minn. R. Civ. P. 54.04(a) (“Costs and disbursements shall be allowed as provided by law.”). Generally, an award of costs and disbursements is a matter within the district court's sound discretion and will not be disturbed absent an abuse of that discretion. *Lake Superior Ctr.*

¹ Appellants also argue that the district court impermissibly relied on the disclosed jail phone calls to dismiss the case. Although the district court did mention in its order dismissing the case that appellants amended their exhibit list the day before trial, the district court relied exclusively on appellants' discovery violations as the basis for dismissing the complaint. We therefore do not address this argument.

Auth. v. Hammel, Green & Abrahamson, Inc., 715 N.W.2d 458, 482 (Minn. App. 2006), *rev. denied* (Minn. Aug. 23, 2006). “[T]he district court retains discretion to determine which party, if any, qualifies as a prevailing party” when considering a request for costs incurred. *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998).

“The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered.” *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998). A dismissal with prejudice “operates as an adjudication on the merits.” *Firoved v. Gen. Motors Corp.*, 152 N.W.2d 364, 368 (Minn. 1967). And generally, any dismissal “other than a dismissal for lack of jurisdiction, for forum non conveniens, or for failure to join a party indispensable pursuant to Rule 19, operates as an adjudication upon the merits.” Minn. R. Civ. P. 41.02(c).

Because appellants’ complaint was dismissed with prejudice, the dismissal operated as an adjudication on the merits. The district court acted within its discretion by determining that respondents were the prevailing party. In addition, the district court carefully evaluated the costs and disbursements claimed by respondents and disallowed some of the expert witness fees that respondents were seeking to recoup. On this record, the district court did not abuse its discretion by awarding costs and disbursements to respondents.

Affirmed.