

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Reaction Rehab, LLC v. Maria Jose Fletcher

No. 3D22-1496 (Fla. 3d DCA Aug. 30, 2023) · No. No. 3D22-1496 · Decided August 30, 2023

SUMMARY

The Florida Third District Court of Appeal reversed an order dismissing Reaction Rehab, LLC’s action with prejudice as a discovery sanction. The court held that the trial court failed to conduct the required analysis and make express findings regarding each of the six Kozel factors, including the client’s personal involvement and judicial-administration problems. The case was remanded for further proceedings, without deciding whether dismissal might ultimately be appropriate.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Logue, C.J.; Miller, J.; Lobree, J.
JURISDICTION	Florida
DECIDED	August 30, 2023
DOCKET	No. 3D22-1496
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Reaction Rehab appealed a county court final order dismissing its action with prejudice as an ultimate sanction for discovery misconduct and failure to comply fully with discovery orders.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	published
PARTIES	Reaction Rehab, LLC v. Maria Jose Fletcher, et al.

TOPICS

- sanctions
- discovery dispute
- appellate procedure
- standard of review
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- discovery sanctions
- commercial litigation

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing Reaction Rehab's complaint with prejudice as a discovery sanction without making express findings regarding each of the six Kozel factors.
2. Whether dismissal with prejudice may be sustained where the trial court's order did not distinguish between misconduct by the client and misconduct by counsel.
3. Whether the Kozel factors apply when a party is sanctioned for its own noncompliance while acting pro se.

HOLDINGS

1. Before dismissing a case with prejudice as a sanction for discovery misconduct, the trial court must consider all six Kozel factors and make express findings of fact as to each factor. Failure to do so requires reversal or vacatur of the dismissal.
2. When imposing dismissal with prejudice as a discovery sanction, the trial court must differentiate between the actions of the client and those of counsel and make findings regarding the corresponding conduct of each.
3. Kozel does not apply where a party is sanctioned for its own failures to comply with court orders while acting pro se, because there is no attorney conduct from which the trial court must distinguish the client's conduct.

KEY QUOTATIONS

“The dismissal of an action based on the violation of a discovery order will constitute an abuse of discretion where the trial court fails to make express written findings of fact supporting the conclusion that the failure to obey the court order demonstrated willful or deliberate disregard.” (at 3)

“The Kozel factors are: 1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for noncompliance; and 6) whether the delay created significant problems of judicial administration.” (at 3)

“In analyzing whether dismissal of a lawsuit with prejudice is warranted based on discovery misconduct, “it is critically important for the trial court to differentiate between the actions of the client and the actions of counsel, and to make findings of fact regarding the corresponding conduct of each.”” (at 6)

FACTUAL BACKGROUND

Maria Jose Fletcher suffered injuries in a trip-and-fall accident at a shopping center and attended physical therapy at Reaction Rehab. Reaction Rehab sued Fletcher for unpaid services, and Fletcher requested production of documents relevant to her treatments and affirmative defenses. Reaction Rehab repeatedly failed to provide complete discovery responses despite five orders compelling responses, two monetary sanctions, and a warning that further noncompliance could lead to dismissal. Its final production was an unorganized package of hundreds of pages that was not Bates stamped, was not filed in the record, did not identify which documents answered which requests, and did not state when no responsive documents existed.

PROCEDURAL HISTORY

Fletcher sued or was sued in connection with Reaction Rehab's claim for unpaid physical therapy services. After Fletcher served discovery, Reaction Rehab failed to respond fully and timely despite five motions to compel, multiple court orders, two monetary sanctions, and a warning that further noncompliance could result in dismissal. On Fletcher's fifth motion to compel and for dismissal as a sanction, the county court dismissed the complaint with prejudice, finding bad faith and intentional prejudice. The Third District Court of Appeal vacated the dismissal and remanded for further proceedings consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct an evidentiary hearing to the extent necessary to analyze and make express findings regarding each of the six Kozel factors, including the distinction between client and attorney conduct. The trial court may ultimately determine that dismissal with prejudice is appropriate.

CASES CITED

- Carolann D. Kozel v. D. Steven Ostendorf, D.P.M., Kozel v. Ostendorf, 629 So. 2d 817, 818 (Fla. 1993)
- Ham v. Dunmire, 891 So. 2d 492, 495 (Fla. 2004)
- Sukonik v. Wallack, 178 So. 3d 455, 457 (Fla. 3d DCA 2015)
- Mercer v. Raine, Mercer v. Raine, 443 So. 2d 944, 946 (Fla. 1983)
- First Baptist Church of Greater Miami v. Miami Baptist Ass'n, Inc., 2023 WL 2506384, at *1-*3 (Fla. 3d DCA Mar. 15, 2023)
- Deutsche Bank Nat'l Tr. Co. v. Sombrero Beach Rd., LLC, 260 So. 3d 424, 428 (Fla. 3d DCA 2018)
- Ledo v. Seavie Resources, LLC, 149 So. 3d 707, 710 (Fla. 3d DCA 2014)

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