

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Tubero v. Chapnich

552 So. 2d 932 (Fla. Dist. Ct. App. 1989) · No. No. 88-1187 · Decided August 30, 1989

SUMMARY

The Florida Fourth District Court of Appeal held that an order imposing dismissal or default as a discovery sanction under Florida Rule of Civil Procedure 1.380 must expressly find that the noncompliance was willful or deliberate. Because the trial court's dismissal order lacked such a finding, the court reversed and remanded for further proceedings, while certifying a question of great public importance to the Florida Supreme Court.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner; Anstead; Gunther
JURISDICTION	Florida
DECIDED	August 30, 1989
DOCKET	No. 88-1187
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed an order dismissing his complaint as a discovery sanction under Florida Rule of Civil Procedure 1.380 for failure to comply with an order compelling discovery.
STANDARD OF REVIEW	Abuse of discretion, with appellate review requiring an express finding of the essential facts supporting the severe sanction of dismissal or default.
PRECEDENTIAL VALUE	Published Florida Fourth District Court of Appeal opinion; question certified as one of great public importance.
PARTIES	Moshe Tubero v. David I. Chapnich, d/b/a Florida Financial Service Group, et al., Com. Sav. and Loan

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a trial court order imposing dismissal or default as a severe discovery sanction under Florida Rule of Civil Procedure 1.380 must contain an express written finding that the noncompliance was willful or deliberate.
2. Whether the trial court abused its discretion by dismissing the complaint without making an express written finding of willful or deliberate disregard of the discovery orders.

HOLDINGS

1. An order granting dismissal or default under Florida Rule of Civil Procedure 1.380 for failure to provide discovery must contain an express written finding that the party's conduct was a willful or deliberate violation of the discovery orders.
2. The dismissal order was facially insufficient because it merely stated that the complaint was dismissed for failure to comply with the discovery order and did not expressly find willful or deliberate disregard.

KEY QUOTATIONS

“that the striking of pleadings or entering a default for noncompliance with an order compelling discovery [pursuant to Florida Rules of Civil Procedure 1.380] is the most severe of all sanctions which should be employed only in extreme circumstances” (at 933)

“The sanction of dismissal or default should be applied in only the most extreme cases, and must be commensurate with the violation” (at 935)

“We do not think it too great a task to require the trial court to make a written finding of the essential facts which supports the imposition of the most severe sanction, and, in line with Stoner, we hold that an order granting a dismissal or default under rule 1.380 for failure to provide discovery must make an express written finding that appellant's conduct was a willful or deliberate violation of the discovery orders.” (at 935-936)

FACTUAL BACKGROUND

Tubero's attorney sought to withdraw before the deadline for responding to appellee's requests for production and interrogatories, citing lack of cooperation and irreconcilable differences. After Tubero did not respond, the trial court entered an order compelling discovery and later dismissed the complaint as a sanction for violating that order. The record did not show whether Tubero personally received notice of the discovery proceedings or dismissal hearing, and the dismissal order did not state that his conduct was willful or deliberate.

PROCEDURAL HISTORY

Tubero filed the complaint in November 1987. After Tubero failed to respond to discovery and to a March 8, 1988 order compelling discovery, the trial court entered an order on April 5, 1988, granting sanctions and dismissing the complaint. The Fourth District reversed and remanded, holding that the dismissal order was facially insufficient because it did not expressly find that Tubero's noncompliance was willful or deliberate.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings, without prejudice to the trial court's reconsideration of the sanction to determine whether Tubero deliberately or willfully disregarded the discovery order.

CASES CITED

- Mercer v. Raine, Mercer v. Raine, 443 So. 2d 944 (Fla. 1983)
- Stoner v. Verkaden, 493 So. 2d 1126 (Fla. 4th DCA 1986)
- McNamara v. Bradley Realty, Inc., 504 So. 2d 814 (Fla. 4th DCA 1987)
- Donner v. Smith, 517 So. 2d 709 (Fla. 4th DCA 1987)
- Arviv v. Perlow, 528 So. 2d 139 (Fla. 4th DCA 1987)
- Bernaad v. Hintz, 530 So. 2d 1055 (Fla. 4th DCA 1988)
- In re Forfeiture of Twenty Thousand Nine Hundred Dollars Currency, 539 So. 2d 14 (Fla. 4th DCA 1989)
- Championship Wrestling from Florida v. DeBlasio, 508 So. 2d 1274 (Fla. 4th DCA 1987)
- Mittleman v. Rowe International, Inc., 511 So. 2d 766 (Fla. 4th DCA 1987)
- Cohn v. Nostalgia Realty, Inc., 516 So. 2d 1073 (Fla. 4th DCA 1987)
- Trupei v. City of Lighthouse Point, 506 So. 2d 19 (Fla. 4th DCA 1987)
- Santuoso v. McGrath & Associates, Inc., 385 So. 2d 112 (Fla. 3d DCA 1980)
- Wallraff v. T.G.I. Friday's, Inc., 490 So. 2d 50 (Fla. 1986)
- Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985)
- Faircloth v. Faircloth, 339 So. 2d 650 (Fla. 1976)
- Faircloth v. Faircloth, 321 So. 2d 87 (Fla. 1st DCA 1975)
- Zafirakopoulous v. South Miami International Crabhouse Corp., 513 So. 2d 1353 (Fla. 3d DCA 1987)
- United Services Automobile Association v. Strasser, 492 So. 2d 399 (Fla. 4th DCA 1986)
- Whack v. Seminole Memorial Hospital, 456 So. 2d 561 (Fla. 5th DCA 1984)
- Johnson v. Allstate Insurance Co., 410 So. 2d 978 (Fla. 5th DCA 1982)
- Ferrante v. Waters, 383 So. 2d 749 (Fla. 4th DCA 1980)
- Bieling v. E.F. Hutton, 522 So. 2d 878 (Fla. 2d DCA 1988)