

SUPREME COURT OF FLORIDA

Commonwealth Federal Savings and Loan Association v. Tubero

Commonwealth Federal Sav. and Loan Ass'n v. Tubero, 569 So.2d 1271 (Fla. 1990) · No. 75370

SUMMARY

In **Commonwealth Federal Savings & Loan Ass'n v. Tubero**, 569 So.2d 1271 (Fla. 1990), the Florida Supreme Court held that an order imposing the severe discovery sanctions of dismissal or default under Florida Rule of Civil Procedure 1.380 must contain an express written finding that the party’s failure to comply was willful or deliberate. The court reasoned that such a finding ensures the trial judge consciously determined the noncompliance was more than neglect or inadvertence and facilitates meaningful appellate review. No “magic words” are required, but the order must reflect a determination that the conduct was equivalent to willfulness or deliberate disregard.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Grimes; Shaw; Overton; McDonald; Ehrlich; Barkett; Kogan
JURISDICTION	Florida
DOCKET	75370
DISPOSITION	approved
PROCEDURAL POSTURE	Review of a certified question from the Florida Fourth District Court of Appeal.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	binding
PARTIES	Commonwealth Federal Savings and Loan Association v. Moshe Tubero

TOPICS

- civil procedure
- discovery dispute
- sanctions
- appellate procedure

PRACTICE AREAS

- Civil Procedure
- Discovery Sanctions

QUESTIONS PRESENTED

1. Is an express written finding of willful or deliberate refusal to obey a court order to comply with discovery under Florida Rule of Civil Procedure 1.380 necessary to sustain the severe sanctions of dismissal or default against a noncomplying plaintiff or defendant?

HOLDINGS

1. An order imposing the severe sanctions of dismissal or default for failure to comply with discovery must contain an express written finding that the party's conduct was a willful or deliberate disregard of the court's order.

KEY QUOTATIONS

“A deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions, as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness.” (569 So.2d at 1272)

“no 'magic words' are required but rather only a finding that the conduct upon which the order is based was equivalent to willfulness or deliberate disregard.” (569 So.2d at 1273)

“Except where mandated by statute or rule, we are loath to require trial judges to make specific findings of fact in support of their rulings.” (569 So.2d at 1273)

FACTUAL BACKGROUND

Moshe Tubero filed suit against Commonwealth Savings and Loan Association on November 16, 1987. Commonwealth served discovery requests on January 21, 1988, which Tubero did not answer. After a motion to compel was granted, Tubero still failed to comply. On April 5, 1988, the trial court dismissed the complaint for failure to comply with the discovery order. The record showed no attempt by Tubero to comply or communicate any excuse.

PROCEDURAL HISTORY

Moshe Tubero sued Commonwealth Federal Savings and Loan Association. After Tubero failed to respond to discovery, the trial court dismissed the complaint. The Fourth District reversed, holding that an order of dismissal under Rule 1.380 must contain an express written finding of willful or deliberate refusal, and certified the question to the Florida Supreme Court.

DISPOSITION

approved

CASES CITED

- Mercer v. Raine, Mercer v. Raine, 443 So.2d 944 (Fla. 1983)
- Swindle v. Reid, 242 So.2d 751 (Fla. 4th DCA 1970)
- Herold v. Computer Components Int'l, Inc., 252 So.2d 576 (Fla. 4th DCA 1971)
- Santuoso v. McGrath & Assocs., Inc., 385 So.2d 112 (Fla. 3d DCA 1980)

- Bowen v. Bowen, 471 So.2d 1274 (Fla. 1985)
- Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980)
- Wallraff v. T.G.I. Friday's, Inc., 490 So.2d 50 (Fla. 1986)
- In re Forfeiture of Twenty Thousand Nine Hundred Dollars (\$20,900) U.S. Currency, 539 So.2d 14 (Fla. 4th DCA 1989)
- Bernaad v. Hintz, 530 So.2d 1055 (Fla. 4th DCA 1988)
- Arviv v. Perlow, 528 So.2d 139 (Fla. 4th DCA 1988)
- Donner v. Smith, 517 So.2d 709 (Fla. 4th DCA 1987)
- Championship Wrestling from Florida, Inc. v. DeBlasio, 508 So.2d 1274 (Fla. 4th DCA), review denied, 518 So.2d 1274 (Fla. 1987)
- McNamara v. Bradley Realty, Inc., 504 So.2d 814 (Fla. 4th DCA 1987)
- Stoner v. Verkaden, 493 So.2d 1126 (Fla. 4th DCA 1986)
- Tubero v. Chapnich, 552 So.2d 932 (Fla. 4th DCA 1989)

CITED IN

- Commonwealth Federal Savings and Loan Association v. Tubero, Commonwealth Federal Savings & Loan Ass'n v. Tubero, 569 So. 2d 1271 (Fla. 1990)
- Commonwealth Federal Savings and Loan Association v. Tubero, Commonwealth Fed. Sav. & Loan Ass'n v. Tubero, 569 So. 2d 1271, 1272 (Fla. 1990)
- Commonwealth Federal Savings and Loan Association v. Tubero, Commonwealth Fed. Sav. & Loan Ass'n v. Tubero, 569 So. 2d 1271 (Fla. 1990)