

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Santuoso v. McGrath & Associates, Inc.

385 So. 2d 112 (Fla. 3d DCA 1980) · No. No. 80-370 · Decided June 10, 1980

SUMMARY

The Florida Third District Court of Appeal reversed an interlocutory default entered against a defendant as a discovery sanction for failing to resubmit to a deposition. The court held that entry of default determining liability was an excessive sanction and an abuse of discretion because the record did not establish sufficiently aggravated or willful disobedience, while permitting the trial court to impose a lesser authorized sanction on remand.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Schwartz; Nesbitt; Pearson; Daniel
JURISDICTION	Florida
DECIDED	June 10, 1980
DOCKET	No. 80-370
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from an order entering a default against Santuoso as a discovery sanction and determining liability in favor of McGrath.
STANDARD OF REVIEW	Abuse of discretion review of the trial court's imposition of discovery sanctions.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Gerald M. Santuoso v. McGrath & Associates, Inc., Gail Marie Fournier

TOPICS

- default
- discovery dispute
- sanctions
- interlocutory appeal
- civil procedure

PRACTICE AREAS

- civil procedure
- discovery sanctions
- appellate procedure
- trust remedies

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by entering a default determining liability as a discovery sanction for Santuoso's failure to resubmit to deposition.

HOLDINGS

1. A default determining liability is an excessive discovery sanction and an abuse of discretion when the circumstances do not establish an extreme, flagrant, or aggravated violation and the sanction is disproportionate to the violation.

KEY QUOTATIONS

“Under the circumstances presented, we hold the sanction consisting of the entry of default as to liability against Santuoso was excessive and amounted to an abuse of discretion.” (114)

“The severity of a sanction must be commensurate with the violation” (113)

FACTUAL BACKGROUND

McGrath sued Santuoso and Fournier seeking a constructive trust over funds allegedly converted from McGrath. Santuoso had submitted to a deposition but refused to answer certain questions, which were certified, and later obtained a protective order postponing further deposition pending a psychiatric evaluation of Fournier. After counsel withdrew, the trial court ordered Santuoso to resubmit to deposition, but he failed to do so; the court then entered a default determining liability. The appellate court found that Santuoso had notice of the deposition but concluded that the liability default was an excessive sanction under the circumstances.

PROCEDURAL HISTORY

McGrath sued Santuoso and Fournier to impose a constructive trust for allegedly converted funds. After Santuoso refused to answer certain deposition questions, obtained a protective order, and failed to resubmit to deposition after the trial court ordered him to do so, the trial court entered a default determining liability against the defendants. Santuoso appealed, and the District Court of Appeal reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court may, after remand, impose upon Santuoso an authorized lesser sanction that it determines is just and proper under the circumstances.

CASES CITED

- Owens-Illinois, Inc. v. Lewis, 260 So. 2d 221, 226 (Fla. 1st DCA 1972)
- Leatherby Insurance Company v. Jones, 332 So. 2d 139 (Fla. 3d DCA 1976)
- Hurley v. Werly, 203 So. 2d 530 (Fla. 2d DCA 1967)
- Turner v. Anderson, 376 So. 2d 899 (Fla. 2d DCA 1979)

- Travelers Insurance Company v. Rodriguez, 357 So. 2d 464 (Fla. 2d DCA 1978)
- Goldstein v. Goldstein, 284 So. 2d 225 (Fla. 3d DCA 1973)
- Beaver Crane Service, Inc. v. National Surety Corporation, 373 So. 2d 88 (Fla. 3d DCA 1979)
- Masons Concrete of Crystal River, Inc. v. Corbin Well Pump & Supply, Inc., 364 So. 2d 824 (Fla. 2d DCA 1978), cert. denied, 373 So. 2d 457 (Fla. 1979)
- Ramos v. Sanchez, 375 So. 2d 51 (Fla. 2d DCA 1979)

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