

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Stoner v. Verkaden

493 So. 2d 1126 (Fla. 4th DCA 1986) · No. No. 85-2014 · Decided September 17, 1986

SUMMARY

The Florida Fourth District Court of Appeal reversed a final judgment against an individual defendant because the trial court's discovery order directed only the corporation to produce bills and invoices. The court held that discovery sanctions could not be imposed on the individual for the corporation's noncompliance, and that the issue was fundamental and could be considered for the first time on appeal.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Glickstein, J.; Gunther, J.; Stone, J.
JURISDICTION	Florida
DECIDED	September 17, 1986
DOCKET	No. 85-2014
DISPOSITION	reversed
PROCEDURAL POSTURE	Wonna Stoner appealed a final judgment entered against her after the trial court struck her pleadings as a discovery sanction.
STANDARD OF REVIEW	De novo review of the legal issue concerning the trial court's authority to impose discovery sanctions; the court also considered an unpreserved fundamental error.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Wonna Stoner v. C.H. Verkaden, Stoner Builders Corporation

TOPICS

- sanctions
- discovery dispute
- appellate procedure
- preservation of error
- contracts

PRACTICE AREAS

- civil procedure
- appellate procedure
- construction law
- contracts

QUESTIONS PRESENTED

1. Whether the trial court could impose discovery sanctions against the individual defendant when the discovery order did not direct her to produce the requested documents.
2. Whether the appellate court could consider that issue for the first time on appeal because the error was fundamental.

HOLDINGS

1. The trial court committed harmful error by striking the individual defendant's pleadings because the discovery order did not direct her to produce the requested bills and invoices, and the corporation's alleged discovery misconduct could not be charged to her as a co-party.
2. The appellate court could consider the issue for the first time on appeal because the trial court's lack of authority to impose the sanctions constituted fundamental error and declining review would result in a miscarriage of justice.

KEY QUOTATIONS

"If one has not been ordered by the court to submit to discovery, one cannot have failed to comply with the order. One cannot willfully disregard an order one has not been given." (493 So. 2d at 1127)

"The corporation's misconduct cannot be charged to its co-party." (493 So. 2d at 1127)

FACTUAL BACKGROUND

The underlying action alleged an oral contract under which the plaintiff was to receive a percentage of construction costs. The plaintiff sought bills and invoices reflecting labor and materials performed by Stoner Builders Corporation, and the corporation and individual defendant moved for a protective order. The trial court granted the motion to compel against the defendant identified in the order as the corporation, but later struck the individual defendant's pleadings and entered a \$25,800 judgment against her.

PROCEDURAL HISTORY

The appellee sought discovery of bills and invoices from Stoner Builders Corporation. Although the trial court's order compelling production referred to the corporation and did not instruct the individual appellant to comply, the court struck the appellant's pleadings for failure to produce documents and later entered a \$25,800 final judgment against her. The Fourth District Court of Appeal reversed.

DISPOSITION

reversed

CASES CITED

- *Zanathy v. Beach Harbor Club Association, Inc.*, 343 So. 2d 625 (Fla. 2d DCA 1977)
- *Henry A. Knott Company, Division of Knott Industries v. Redington Towers, Inc.*, 428 So. 2d 687 (Fla. 2d DCA 1983)
- *Leatherby Insurance Company v. Jones*, 332 So. 2d 139 (Fla. 3d DCA 1976)

- Mercer v. Raine, Mercer v. Raine, 443 So. 2d 944, 947 (Fla. 1983)
- Hillsborough County v. Bennett, 167 So. 2d 800, 805 (Fla. 2d DCA 1964)

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