

Levine v. Hite et. al. (AC 40626)

Brief Summary: Plaintiff was injured in a car accident. The first judge initially denied the defendants motion to compel certain medical records. However, following a six to eight week continuance request by the plaintiff's counsel, three subsequent judges ordered the plaintiff to produce certain medical records. The plaintiff did not comply, and a judgement of nonsuit was ordered. Court held that none of the judges abused their discretion in compelling the medical records nor in issuing a judgment of nonsuit against the plaintiff.

The plaintiff, Michelle Levine, commenced a personal injury action against the defendants in December 2012. She claimed that on December 6, 2010 she was operating her vehicle when it was struck by another vehicle operated by Randall Hite and owned by Tanya Hite—the defendants. The matter was scheduled for trial with jury selection to commence on December 6, 2016. However, it got delayed to January 4, 2017 due to scheduling issues raised by both parties' counsels. Jury selection commenced on January 5, 2017. The next day, the defendants filed a motion to compel certain medical records from the plaintiff. Judge Shapiro heard arguments regarding the motion. However, after jury selection was completed, Judge Shapiro informed the parties that four of the eight jurors wrote letters requesting that they be excused from the jury. Thus, Judge Shapiro concluded that the motion was “untimely” and denied it. On January 20, 2017, jury selection was scheduled for March 14, 2017. Further, Judge Sheridan ordered that no additional pretrial motions, pretrial discovery, designation of additional witnesses or additional exhibits for trial will be permitted, without the prior permission of the court based upon a showing of good cause. On January 27, 2017, the defendants filed a motion to reconsider Judge Shapiro's denial of their motion to compel. Judge Shapiro denied the defendants' motion, referencing Judge Sheridan's order. On March 26, 2017, the plaintiff's

counsel requested a six to eight week continuance due to certain medical conditions. Judge Noble, now assigned as the trial judge, then granted the defendants' motion to continue discovery. The plaintiff unsuccessfully challenged the motion. On March 30, 2017, the defendants filed a motion for an order for compliance, seeking the medical records from the plaintiff that the defendants claimed had not been completely disclosed. On April 25, 2017, Judge Epstein, the judge trial referee, granted the defendants' motion for an order for compliance. Judge Epstein's order provided that the plaintiff must comply with all outstanding discovery requests for medical records and billings by May 2, 2017. On May 3, 2017, the defendants moved for a judgment of nonsuit, claiming that the plaintiff had failed to comply with Judge Epstein's order. On May 15, 2017, Judge Peck denied the defendants' motion without prejudice and ordered the plaintiff to produce the requested medical records no later than May 30, 2017. On May 31, 2017, the defendants again moved that the court nonsuit the plaintiff for her failure to comply with the orders of Judge Epstein and Judge Peck. On June 19, 2017, Judge Peck order a nonsuit as to the plaintiff for her failure to comply with three previous orders of the court to produce the requested medical records. Furthermore, Judge Peck noted a fine would not do justice to such deliberate, unwarranted disregard for the court's authority.

Issues

The issues on appeal were: (1) whether Judge Noble's ruling was an abuse of discretion because he improperly raised and considered a prior ruling of Judge Shapiro without affording the plaintiff a fair opportunity to respond; and (2) whether Judge Peck abused her discretion when issuing an order of nonsuit.

Holding

The court held that Judge Noble's ruling to compel discovery was not an abuse of discretion as new circumstances in the case influenced Judge Noble's decision to make a ruling contrary to Judge Shapiro's prior ruling on the issue. Further, that Judge Peck did not abuse her discretion in issuing a nonsuit because the plaintiff blatantly disregarded three reasonably clear court orders.

Discussion

The law of the case doctrine provides that when a matter has previously been ruled upon, the court in the subsequent proceeding in the case may treat the decision as the law of the case, if it is of the opinion that the issue was correctly decided, in the absence of some new or overriding circumstance. Thus, if a new or overriding circumstance emerges a judge can vacate, modify, or depart from an interlocutory order or ruling of another judge in the case.

The plaintiff argued that Judge Noble's order compelling her to produce the requested medical records was an abuse of discretion because the prior ruling of Judge Shapiro was the law of the case. However, the court rejected this argument because the new and overriding circumstance that Judge Noble considered in his ruling was the plaintiff's request for a six to eight week continuance for medical reasons. Thus, it was not an abuse of discretion because the decision was not made arbitrarily, rather, with consideration of the circumstances surrounding the case. Furthermore, the court rejected the plaintiff's argument that Judge Noble violated her due process rights by reconsidering the discovery issue without giving her time to respond. The court responded that had the plaintiff believed she was not prepared to argue the issue, she could have requested a recess to review the file and prepare her arguments, but she did not. Furthermore, that there was no indication as to what the plaintiff would have argued as her appellate brief merely states that she would have "attempted to familiarize Judge Noble with the

entire procedural history of the case.” The plaintiff is essentially assuming, without evidence, that Judge Noble had not reviewed the file or was unfamiliar with the prior rulings in the case. The court stated there was no foundation for this assumption, consequently, concluding that the plaintiff’s due process rights were not violated by Judge Noble’s ruling.

Next, the plaintiff argued that her failure to comply with the discovery orders did not warrant a judgment of nonsuit by Judge Peck. The court concluded that Judge Peck did not abuse her discretion by issuing an order or nonsuit.

In order for a trial court’s order of sanctions for violation of a discovery order to withstand scrutiny, three requirements must be met: (1) the order to be complied with must be reasonably clear; (2) the order must have been violated; and (3) the sanction imposed must be proportional to the violation. The first requirement is a legal question requiring a de novo review standard, meaning the court rules on it as if it were presented to them for the first time. The second requirement is a question of fact; thus, the court uses a clearly erroneous standard. Unless the factual finding was a clear error, the court will not overturn it. The last requirement poses a question of discretion; thus, it will not be overturned unless the trial court clearly abused its discretion.

First, the court stated that the first requirement was met because the orders of Judge Noble, Judge Epstein and Judge Peck to produce the medical records were reasonably clear. They were reasonably clear as they were orders for specific documents, there is no doubt what the plaintiff was ordered to do. Second, the court stated that it was undisputable that the second requirement was met as the plaintiff obviously did not comply with the order as the defendant never received the requested records. Third, the court concluded that Judge Peck’s judgment of

nonsuit was not an abuse of discretion because the plaintiff blatantly disregarded three court orders, in which she had a duty to follow. Thus, affirming the judgment of the trial court.

The key takeaway from this case is that if one disregards orders from the court their action may be dismissed via a judgment of nonsuit. This is salient because the plaintiff here may have had a strong case against the defendant for the injuries she suffered, however, she will not be able to recover simply because she failed to comply with court orders.