

2019 WL 719185

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District Court of Appeal of Florida, Fourth District.

Penny PERLMUTTER, Appellant,
v.
OLYMPUS INSURANCE COMPANY, a Florida
corporation, Appellee.

No. 4D18-731

|
[February 20, 2019]

Appeal from the Circuit Court for the Fifteenth Judicial
Circuit, Palm Beach County; Richard L. Oftedal, Judge,
and Edward A. Garrison, Acting Circuit Judge; L.T. Case
No. 502015CA010548XXXXMB.

Attorneys and Law Firms

[Joel L. Roth](#), Sagi Shaked and Loretta Guevara of Shaked
Law Firm, P.A., Aventura, for appellant.

[Marc J. Gutterman](#) and [Seth J. Feintuch](#) of Gutterman
Trial Group, Fort Lauderdale, for appellee.

Opinion

[Kuntz, J.](#)

*1 Penny Perlmutter appeals the circuit court’s
involuntary dismissal of her complaint against Olympus
Insurance Company. She raises two issues on appeal.
First, she argues the court erred in its application of the
factors set forth in [Kozel v. Ostendorf](#), 629 So.2d 817
(Fla. 1993), required to justify an involuntary dismissal.
Second, she argues she was unfairly prejudiced by the
involuntary dismissal. We affirm.

Perlmutter sued Olympus, asserting claims arising out of
a homeowner’s insurance claim. During the lawsuit,
Olympus filed a request for its consulting experts to enter
Perlmutter’s land to inspect her property. Days before
trial and facing court-ordered deadlines to do so,
Perlmutter had failed to schedule the inspection. As a

result of this failure and other discovery violations,
Olympus sought sanctions.

At the end of a hearing on Olympus’s motion for
sanctions, the court issued an order involuntarily
dismissing Perlmutter’s complaint. The court addressed
each of the six required [Kozel](#) factors:

1) whether the attorney’s
disobedience was willful,
deliberate, or contumacious, rather
than an act of neglect or
inexperience; 2) whether the
attorney has been previously
sanctioned; 3) whether the client
was personally involved in the act
of disobedience; 4) whether the
delay prejudiced the opposing party
through undue expense, loss of
evidence, or in some other fashion;
5) whether the attorney offered
reasonable justification for
noncompliance; and 6) whether the
delay created significant problems
of judicial administration.

[629 So.2d at 818.](#)

The court explained that Olympus’s “long standing quest
for discovery beginning with the October 26, 2016,
Request for Entry Upon Land has been met with either
utter indifference or outright resistance.” And “emails
were routinely ignored and court ordered deadlines were
disregarded.” The court noted that it had issued an order
that “unequivocally mandated that the inspection take
place no later than July 17, 2017.” Yet, after the deadline
passed, the inspection still had not taken place.

In its order of involuntary dismissal, the court noted that
after it issued the order requiring inspection of the
property by July 17, “counsel for Olympus made repeated
and diligent attempts to schedule the Inspection,
mediation and the depositions of any remaining
witnesses.” But “[d]espite the urgency of the situation,
these emails were, for the most part, totally ignored. In
those rare instances where there was a response from
[Perlmutter], it was to reject the dates proposed by
[Olympus] without any suggestion of alternate dates.”¹

The court continued, stating that “the end result was that

the court imposed deadlines for discovery and mediation came and went ... [t]hrough no fault of [Olympus].” Instead, “it appears that the client, [Perlmutter], must assume some, if not the majority of the responsibility for the delays in obtaining discovery by not allowing or permitting inspection of her residence and by not being responsive to her attorney’s numerous requests for information and dates.”

*2 The court also found that Perlmutter’s “failure to provide discovery has left [Olympus] totally unprepared for a trial that is only days away. To cancel and reset the trial would only serve to reward [Perlmutter] for her flagrant disregard of court orders and encourage similar conduct in the future.” The court concluded that Perlmutter “filed this action seeking affirmative relief but has frustrated [Olympus’s] attempt to ready itself for trial and willfully and without justification violated this court’s Orders.” Based on these findings, the court entered the order of involuntary dismissal.

While courts must be careful when dismissing an action for violating court orders or the rules of procedure, in certain cases the ultimate sanction of dismissal is appropriate. Here, the court’s findings were supported by competent, substantial evidence. Perlmutter’s actions caused prejudice to Olympus and showed a blatant disregard for the court’s orders and the efficient administration of justice. As a result, we affirm the court’s order in its entirety.

Affirmed.

Gerber, C.J., and Ciklin, J., concur.

All Citations

--- So.3d ----, 2019 WL 719185

Footnotes

¹ We note that approximately four months after the initial request for entry upon land, Perlmutter provided one date for the inspection that Olympus responded to within minutes but never confirmed. Later, Perlmutter provided a date for the inspection, but the date was after the court-ordered deadline.