



Zagaruyka and Associates v. HealthSmart Benefit Solutions Inc

2020 | Cited 0 times | W.D. Oklahoma | August 10, 2020

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA
ZAGARUYKA & ASSOCIATES,)

Plaintiff,) v.) Case No. CIV-18-697-G HEALTHSMART BENEFIT) SOLUTIONS INC. d/b/a)
HEALTHSMART,)

Defendant.)

NATIONAL UNION FIRE) INSURANCE COMPANY OF) PITTSBURGH, PA,)

Counterclaimant,) v.) ASHLEY ZAGARUYKA,) individually and d/b/a) ZAGARUYKA &
ASSOCIATES,)

Counterclaim Defendant;) and) CAROL PROCTOR,)

Counterclaim Defendant.)

ORDER On June 25, 2020, a hearing was held by the Court regarding the possible imposition of sanctions due to repeated failure to file a disclosure applicable rules. See Doc. No. 82.

Up rules as set forth herein.

I. Entity

A. Background Federal Rule of Civil Procedure 7.1 requires any

pleading, petition, motion, response, or other request addressed to the court supplemental statement if any required information changes. Fed. R. Civ. P. 7.1(a), (b). liability company or partnership LCvR 7.1.1.

The plaintiff in this matter, Zagaruyka & Associates , identified itself as a (Doc. No. 1-2). Following removal of the case to this Court, attorney Jacque Pearsall entered an appearance as counsel for Z&A on October 30, 2018, see Doc. No. pleading was filed that same date, see Doc. No. 13. As of February 4, 2020, however, the



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docket reflected that Z&A had not filed an entity disclosure statement. Accordingly, the Court ordered Z&A to file its disclosure statement Procedure and/or Local Civil Rule 7.1.1 within seven days of that date. See Order of Feb. 4, 2020 (Doc. No. 66) at 2. No disclosure statement or other relevant filing was submitted by Z&A.

On April 30, 2020, the Court seven days of the filing of this order, why [it] should not be sanctioned for failing to comply

Order to respond

B. The June 25, 2020 Hearing of May

28, 2020 (Doc. No. 82) at 2. At no time did Z&A request relief from this Order or otherwise

When the duly scheduled hearing commenced, Ms. Pearsall was present; however, no representative for Z&A was in attendance. When questioned as to why Z&A had failed Ms. Pearsall stated to the Court that she had been unable to communicate with her client. When questioned about the failure to file a disclosure statement, as well as the failure to express order to do so and to show cause, Ms. Pearsall answered that she believed that she had complied with the submitted a letter to opposing counsel in 2019 that included discovery disclosures under Federal Rule of Civil Procedure 26.

II. Discussion

A. Zagaruyka & Associates dismissed, judgment has not been entered on those claims, and Z&A remains a party to this lawsuit. Case 5:18-cv-00697-G Document 99 Filed 08/10/20 Page 3 of 7 expressly required a representative from Z&A to appear at the hearing, and that Order was not complied with. At the hearing, Ms. Pearsall stated that she had left messages for Ashley Zagaruyka regarding the Order but indicated that they had not directly communicated. In addition, the Court as of yet has not appear on June 25, 2020, and the possibility of sanctions thereon. Accordingly, the Court

shall refrain from sanctioning Z&A herein but is not foreclosed from doing so at a later date.

B. Counse As announced at the hearing, the Court finds that there was no justification for Ms. willful failure to comply with the directives of the Rules and of this Court and that sanctions are warranted. Ms. Pearsall disregarded the express order of the Court and failed to comply with applicable rules of civil procedure. When directed to show cause why sanctions should not be issued, Ms. Pearsall ignored that order as well. Then, at the hearing, Ms. Pearsall explained that she has been attempting unsuccessfully to reach her client regarding this lawsuit. While a communications breakdown could conceivably prevent Ms. Pearsall from providing the substantive information required for a disclosure statement (though there was no specific argument to that effect), there was no explanation



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offered as to why such a way or from seeking additional time to do so. Nor did Ms. Pearsall seek to withdraw from

representation or otherwise inform the Court of any issues at any time prior to the June 25, 2020 hearing. When questioned at the hearing, Ms. Pearsall stated that she believed the transmission of unrelated discovery correspondence submitted last year to opposing counsel and never filed with the Court fulfilled the obligation to file a disclosure statement. Aside from the fact that this excuse was not raised previously (despite orders directing a response), Ms. Pearsall confuses the requirement under Rule 7.1 and Local Civil Rule 7.1.1 that an entity disclose its ownership with the requirement under Rule 26(a)(1) that every party make certain initial discovery disclosures. That confusion is unacceptable, moreover, the fact that

1. Authority statute, to

Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017) (internal quotation marks omitted). These powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991) (internal quotation marks omitted); see also Hutchinson v. Hahn, No. 05-CV-453-TCK(PJC), 2007 WL 2572224, at * inherent power to impose sanctions that are necessary to control and supervise its own

proceedings, promote judicial efficiency, deter frivolous filings, and respond to abusive. Courts are required to exercise their inherent powers Chambers, 501 U.S. at 44. appropriate sanction for c Id. at 44-45. The

White v. Gen. Motors Corp., 908 F.2d 675, 684 (10th Cir. 1990) (discussing Rule 11 sanctions); see also Farmer v. Banco Popular of N. Am., 791 F.3d 1246, 1259 (10th Cir. 2015).

2. Application of Sanctions to Attorney Pearsall As described above, Ms. Pearsall was provided both notice and a meaningful opportunity to be heard on this matter. See Order of Feb. 4, 2020, at 2; Order of Apr. 30, 2020, at 2-3; Order of May 28, 2020, at 2. Further, -disclosure explanation reflects, at a minimum, a failure to carefully written orders and the Rules cited therein. The Court cannot find that Ms. Pearsall made a good-faith

To gain admission to this Court, Ms. Pearsall was required to represent that she was

support this representation. regarding the statement and the show- *Jacovetti Law, P.C. v. Shelton*, No. 2:20-cv-00163-JDW, 2020 WL

1491320, at *5 (E.D. Pa. Mar. 27, 2020); see also *id.* at *2-3, *5-7 (imposing sanctions upon attorney for conduct that included a failure to file a disclosure statement and a failure to timely respond to the



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resulting order to show cause). The Court recognizes, however, that there is no evidence of any pattern of misconduct and no indication that actions have resulted in significant delay or expense to other parties or the Court.

CONCLUSION As outlined above, sanctions shall not be assessed against Plaintiff Zagaruyka & Associates at this time. Esq., is SANCTIONED as follows:

unjustified applicable rules, Ms. Pearsall is FORMALLY REPRIMANDED;

Within 30 days of the date of this Order, Ms. Pearsall SHALL pay \$500 to the Court Clerk for the United States District Court for the Western District of Oklahoma, to be designated for inclusion with the locally-administered, non-appropriated fund maintained by the court from attorney admissions fees; and Within 90 days of the date of this Order, Ms. Pearsall SHALL submit to Judge Goodwin a certification that she has completed six or more hours of continuing legal education programming, approved by the Oklahoma Bar Association, in the subject areas of legal ethics or federal civil litigation. IT IS SO ORDERED this 10th day of August, 2020.

