2013 IL App (1st) 130235-U

FOURTH DIVISION
September 12, 2013

No. 1-13-0235

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MAURICE MAYES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 10 L 13950
	)	
NETCO, INC. and STEWART TITLE GUARANTY COMPANY,	)	Honorable
	)	Daniel J. Pierce,
	)	Judge Presiding.
Defendants-Appellees.	)	

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in dismissing plaintiff's cause of action with prejudice where the failure of plaintiff and his counsel to appear for trial was part of a deliberate and contumacious disregard for the court's authority exhibited throughout the case.

¶ 2 Plaintiff Maurice Mayes filed suit against defendants Netco, Inc. (Netco) and Stewart Title Guaranty Company (Stewart), alleging, among other things, fraudulent misrepresentation, breach of a title insurance contract, and breach of a closing agreement related to the refinancing of plaintiff's residential property. After the trial court partially granted defendants' motion to

dismiss plaintiff's third amended complaint, a trial was set for January 14, 2013 on the remaining counts. Neither plaintiff nor his counsel appeared for the trial. The trial court entered an order dismissing the case, and plaintiff filed this appeal. The parties disagree regarding the terms and effect of the trial court's order, as discussed below.

¶ 3 For the reasons stated herein, we affirm the judgment of the circuit court dismissing plaintiff's cause of action with prejudice.

¶ 4 BACKGROUND

¶ 5 Defendants' respective attorneys were present on the trial date. The case was scheduled for 9:30 a.m. After the proceedings began at 9:55 a.m., the trial court stated, "[l]et's wait a little while and see where plaintiff's counsel is." The court suggested that one of defendants' attorneys could call plaintiff's counsel's office and "see where he is or what his game plan is." At 10:13 a.m., the proceedings were resumed, and defendant Stewart's counsel stated that he had left a message for plaintiff's counsel. Stewart's counsel also stated that he had telephoned plaintiff's counsel two days earlier, on Saturday, January 12, and had left a voicemail message regarding the case.

¶ 6 Upon reviewing the file, the court commented that "[t]his matter while it has been pending in this courtroom on this calendar has had a history of sporadic compliance, at best, with the Court's case management orders and orders with respect to complying with statutory discovery and discovery pursuant to Supreme Court Rules." The court then detailed instances of non-compliance and multiple absences of plaintiff and/or his counsel, discussed further below.

¶ 7 After extending apologies to defendants' out-of-state witnesses, the court stated that the

matter was dismissed for want of prosecution (DWP). Stewart's counsel then asked that the court dismiss the case with prejudice because "a DWP is simply going to give the plaintiff another bite at the apple." The court stated that it was "not inclined to do it with prejudice at this point because there might be some valid reason why he's not here." Stewart's counsel submitted that "if [plaintiff's counsel] actually has a good reason for not being here, [he] can come in on a motion within 30 days to explain himself." The court responded that "[he] can do that whether it's with or without prejudice." Stewart's counsel then stated that, if dismissal was "without prejudice, my understanding is it simply means the case goes away, and he can refile within a year -- or dismissal, rather, for want of prosecution, and we'll be right back here God knows when." The court questioned, "It's a final order either way, right?" Stewart's counsel responded as follows:

> "Well, Judge, regrettably, I've been through the dismissal for want of prosecution situation several times recently. If memory serves, a DWP simply means that the case is taken off calendar, and the plaintiff has a year or within the statute of limitations, whichever is greater, to revive the case to refile, and that's going to put us right back in the same situation sometime hence from now; even though, from my perspective, the plaintiff and his attorney have long known about this trial for a long, long time and have simply chosen not to appear at the considerable expense and prejudice of the defendants, and I believe there is case law on the obligation of a party to follow the case and to present himself at trial on the trial date."

The court then stated, "All right. The Court will dismiss the matter for want of prosecution with

prejudice. That will be the order." Stewart's counsel asked, "So to be clear, then, Judge, it's a dismissal with prejudice?" The Court answered, "That's what I just said," and the proceedings concluded.

¶ 8 The record on appeal includes two orders dated January 14, 2013, dismissing the case. The first – which we will refer to as the "original order" – states, in part, that "for the reasons stated by the Court on the record" the cause is "dismissed with prejudice and without costs." The word "with" is handwritten and replaces the crossed-out typewritten word "without." The order is stamped with the trial judge's name and number and the date. The second order – which we will refer to as the "amended order" – includes the same language as the original order, as well as certain additional language and the judge's signature.[1] Specifically, the order provides that "[t]his cause is dismissed for want of prosecution w/ prejudice. $10^{\underline{30}}$AM". The "w/prejudice" and "$10^{\underline{30}}$AM" language is handwritten. The court also handwrote "π atty or π not in Court. DJP". The trial judge's initials are D.J.P.

¶ 9 ANALYSIS

¶ 10 As a threshold matter, we note that plaintiff's brief fails to comply with various Illinois

[1]Defendants' counsel apparently used a preprinted "form" order with three potential options for the court-ordered relief, each with a space for a checkmark: (a) "___ This cause is voluntarily dismissed with prejudice and without costs"; (b) "___ This cause is dismissed for want of prosecution"; and (c) "___ The case having been previously removed to Federal Court the cause is dismissed w/out prejudice." In the "original" order, only the first box is checked, with the language modified to read, "This cause is dismissed with prejudice and without costs." In the "amended" order, both the first and second boxes are checked, although it appears that the checkmark for the first box was crossed out and then re-inserted. The amended order includes everything from the original order – with the additions described herein – except the stamp of the judge's name and number and the date is in a slightly different position on the page.

Supreme Court rules. For example, the statement of facts appears incomplete and does not correctly cite the record on appeal; the argument section also lacks proper citations to the record. Ill. S. Ct. R. 341(h)(6) and (7) (eff. Feb. 6, 2013). The appellant failed to include the appendix required by Rule 342. Ill. S. Ct. R. 342 (eff. Jan. 1, 2005). Although plaintiff's arguments are less than clear, we will attempt herein to discern his basic contentions.

¶ 11 *The Allegedly Dueling Orders*

¶ 12 In his opening appellate brief, plaintiff seeks the following relief:

> "Appellant prays that this Honorable Court partly reverse the Court's order entered on January 14, 2012 [*sic*] dismissing the Plaintiff's complaint for want of prosecution with prejudice, and allow the Plaintiff to re-file his complaint and proceed to trial holding the court's order allow [*sic*] his attorney to appear pro hoc [*sic*] vice raise [*sic*] a bar of res judicata and that the court order barring summary judgment motions also raise a bar of res judicata."

In his reply brief, the plaintiff "prays that this Honorable Court affirm the signed court order of Janury [*sic*] 14, 2013 in the court below dismissing Mayes' course of action for want of prosecution with prejudice."

¶ 13 As discussed below, defendants contend that the January 14 order was a dismissal with prejudice, not for want of prosecution. Alternatively, defendants assert that if this court were to conclude that the order "was no more than a dismissal for want of prosecution," the order would not be a final appealable order and this Court would "be without jurisdiction to review any rulings of the trial court."

¶ 14 The parties' disagreement on appeal, and the seemingly inconsistent positions adopted by plaintiff between his initial appellate brief and his reply brief, may stem, in part, from the allegedly conflicting orders entered by the trial court on January 14, 2013. Defendants contend that the "original court-stamped order," and "not the amended one containing the trial court's ex-post notations" is the operative order. Such "original" order provides for "dismissal with prejudice." Plaintiff asserts that the operative order is the "amended" order signed by the judge. Plaintiff contends that such order "was clearly a dismissal for want of prosecution with prejudice."

¶ 15 Defendants assert that "[a]n amendment to a previously entered order is void unless all parties receive notice of the proposed amendment." See, *e.g.*, *Smith v. Wilson*, 26 Ill. 186, 188 (1861). While we observe that the apparent existence of two orders is, at a minimum, a curious occurrence, we need not decide which order is indeed the operative order. Interpreting either order, our conclusion is the same.[2]

¶ 16 The "original" order states, in pertinent part, that the "cause is dismissed with prejudice and without costs." This order unambiguously dismisses the action with prejudice. "Generally, the intention of the court is determined only by the order entered, and where the language is clear and unambiguous, it is not subject to construction." *Purcell & Wardrope, Chartered v. Hertz Corporation*, 279 Ill. App. 3d 16, 21 (1996). Assuming the original order is the operative order, we conclude that it clearly provides for dismissal with prejudice, not DWP.

[2]The explanation suggested by defendants in their appellate brief and other filings regarding the existence of the two orders is not part of our analysis herein.

¶ 17 The "amended" order provides, in part, that "for the reasons stated by the Court on the record," the cause was "dismissed with prejudice" and also that the cause was "dismissed for want of prosecution w/ prejudice." As discussed below, a court cannot dismiss a case for want of prosecution with prejudice. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 512 (2001). The order is thus ambiguous on its face.

¶ 18 The Illinois Supreme Court explained in *S. C. Vaughan Oil Company v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489 (1998) that "[i]f a plaintiff's action is dismissed for want of prosecution, that plaintiff has the option, pursuant to section 13-217 of the Code of Civil Procedure, to refile the action within one year of the entry of the DWP order or within the remaining period of limitations, whichever is greater." *Id.* at 497; see 735 ILCS 5/13-217 (West 1994).[3] "Since a dismissal *with prejudice* 'denotes an adjudication on the merits and is *res judicata*,' a dismissal for want of prosecution, by its nature, is *without prejudice*. [Citations.]" *Farrar v. Jacobazzi*, 245 Ill. App. 3d 26, 32 (1993) (Emphasis in original). "Therefore, a trial judge does not have the authority to dismiss a case for want of prosecution with prejudice because, if [the court] had that power, a 'right specifically conferred by [section 13-217] would be defeated. [Citation.]." *Id.; Purcell*, 279 Ill. App. 3d at 21; *Walton v. Throgmorton*, 273 Ill. App. 3d 353, 358 (1995); see also *Sander v. Dow Chemical Company*, 166 Ill. 2d 48, 71 (1995) (stating that "a dismissal for violation of pretrial orders is different from a dismissal for want of

[3]We note that Public Act 89-7, effective March 9, 2005, amended section 13-217 of the Code of Civil Procedure. However, in 1997, the Illinois Supreme Court held Public Act 89-7 to be unconstitutional in its entirety in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 467 (1997). Therefore, we refer to section 13-217 as written prior to the enactment of Public Act 89-7. See 735 ILCS 5/13-217 (West 1994).

prosecution within the meaning of section 13-217 of the Code of Civil Procedure and involves different consequences"); *Brewer v. Moore*, 67 Ill. App. 3d 487, 489 (1978) (holding that trial court should not have "modified the original dismissal order so as to use the magic words 'want of prosecution' " where the initial action was "dismissed as a sanction for failure to comply with court orders").

¶ 19 For example, in *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509 (2001), the defendants' attorney submitted a form order to the court; counsel checked the box next to the category "Case Dismissed for Want of Prosecution" and handwrote the words "WITH PREJUDICE" immediately following the preprinted language. *Id.* at 512. The appellate court stated that section 13-217 of the Code of Civil Procedure, "which governs dismissals for want of prosecution, does not allow a dismissal for want of prosecution to be with prejudice." *Id.* Noting that the order was "ambiguous on its face," the appellate court looked to the "record and the situation that existed" at the time of the trial court order – *i.e.*, the hearing was scheduled for a ruling on the defendants' pending motion to dismiss – and concluded that the order should be construed as a dismissal with prejudice. *Id.*

¶ 20 In light of the foregoing, the trial court's "amended" order – which stated that the cause was both "dismissed with prejudice" and "dismissed for want of prosecution w/ prejudice." – is ambiguous. "[W]here the language of the order is ambiguous, it is subject to construction." *Id.* "In cases of ambiguity, the orders appealed from should be interpreted in the context of the record and the situation that existed at the time of their rendition." *Id.*; see also *Garcia v. Gutierrez*, 331 Ill. App. 3d 127, 129 (2002) (noting that "[a] court order is to be interpreted in its

entirety with reference to other parts of the record, including pleadings, motions, and issues before the court"); *Granville Beach Condominium Association v. Granville Beach Condominiums, Inc.*, 227 Ill. App. 3d 715, 720 (1992) (same). "An order is to be construed in a reasonable manner that gives effect to the apparent intention of the trial court." *Garcia*, 331 Ill. App. 3d at 129; see also *Granville*, 227 Ill. App. 3d at 720.

¶ 21 After reviewing the transcript of the January 14, 2013 proceedings and the remainder of the record, we conclude that the trial court's intent – despite its imperfect phrasing – was to dismiss the case with prejudice. During the January 14 proceedings, the trial court initially expressed reluctance to dismiss the plaintiff's case with prejudice. However, after listening to Stewart's counsel's arguments against a dismissal for want of prosecution – as well as counsel's seeming correction of the trial court's misapprehension that a dismissal for want of prosecution is a final order – the court responded, "All right. The Court will dismiss the matter for want of prosecution with prejudice." Upon defense counsel's request for clarification that "it's a dismissal with prejudice," the Court responded, "That's what I just said." We conclude that the "amended" order was intended to dismiss the case with prejudice. Clearly, the reason for the sanction of dismissal was the failure of plaintiff and his counsel to appear for trial, with defense counsel and out-of-state witnesses present, and in consideration of the history of plaintiff's lack of compliance with previous orders. Furthermore, we agree with defendant's assessment that the notation "π atty or π not in Court" represented the court's intent to "make it clear that his decision was not a ruling on the evidence following trial, but instead was a ruling made in the absence of the plaintiff and his attorney, for the substantive reasons to be found in the record of the

proceedings."

¶ 22 In summary, our conclusion is the same regardless of whether the "original" or the "amended" order is the operative order: the trial court dismissed plaintiff's cause of action with prejudice. Having reached such conclusion, we have jurisdiction to consider the appeal of this final order. We thus turn to its merits.

¶ 23 *Standard of Review*

¶ 24 As a preliminary matter, the parties disagree regarding the applicable standard of review. Citing *People v. Shapiro*, 177 Ill. 2d 519 (1997), plaintiff contends that the standard of review "for an examination of the legal issues presented in this case is *de novo*." In *Shapiro*, the Illinois Supreme Court exercised *de novo* review in a criminal case involving property seizures and the Fourth Amendment, wherein there was no factual dispute. *Id.* at 524. Simply put, *Shapiro* is not relevant to the case at bar.

¶ 25 We agree with defendants that reversal of a trial court's decision to impose a sanction – *i.e.*, dismissal with prejudice – is only justified "when the record establishes a clear abuse of discretion." *Sander*, 166 Ill. 2d at 67; see also *Shimanovsky v. General Motors Corporation*, 181 Ill. 2d 112, 123 (1998) (same); *Cronin v. Kottke Associates, LLC*, 2012 IL App (1st) 111632, ¶ 42 (stating that a "sanction imposed under Rule 219 [citation] or a court's inherent power [citation] is reviewed under an abuse of discretion standard"). "An abuse of discretion occurs where no reasonable person would agree with the position adopted by the trial court." *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997); see also *Alm v. Loyola University Medical Center*, 373 Ill. App. 3d 1, 4 (2007) (noting that a trial court abuses its discretion "only if it 'act[s] arbitrarily

without the employment of conscientious judgment, exceed[s] the bounds of reason and ignore[s] recognized principles of law *** or if no reasonable person would take the position adopted by the court.' [Citation].")

¶ 26 *No Abuse of Discretion*

¶ 27 Defendants advance two main arguments in support of their contention that the trial court did not abuse its discretion in dismissing plaintiff's cause of action with prejudice. Defendants assert that plaintiff's failure to comply with a Rule 237(b) notice to appear at trial may properly serve as the basis for a Rule 219(c) sanction dismissing a matter with prejudice. Citing *Sander*, 166 Ill. 2d at 65-66, defendants further contend that "[a] circuit court has the 'inherent authority' to dismiss a cause of action with prejudice for failure to comply with its orders where the record shows a 'deliberate and contumacious disregard for the court's authority.' " Plaintiff replies, among other things, that "there was never any allegation of deliberate and contumacious disregard for a court order" and that the order "was never a dismissal for contempt of court as [defendants] assert[]."

¶ 28 Illinois Supreme Court Rule 237 addresses compelling appearances of witnesses at trial. Ill. S. Ct. R. 237 (eff. July 1, 2005). Rule 237(b) provides, in part, that the "appearance at the trial or other evidentiary hearing of a party *** may be required by serving the party with a notice designating the person who is required to appear." *Id.* The rule further provides, in part, that "[u]pon a failure to comply with the notice, the court may enter any order that is just, including any sanction or remedy provided for in Rule 219(c) that may be appropriate." *Id.* Illinois Supreme Court Rule 219 addresses the consequences of refusal to comply with rules or orders

relating to discovery or pretrial conferences. Ill. S. Ct. R. 219 (eff. July 1, 2002). Rule 219(c) provides a non-exhaustive list of remedies, including that "*** the offending party's action be dismissed with or without prejudice[.]" *Id.* See, *e.g.*, *Clymore v. Hayden*, 278 Ill. App. 3d 866, 870 (1996) (affirming dismissal with prejudice under Rule 219(c) based on "plaintiff's counsel's history of egregiously disregarding court orders and rules"); *Elders v. Sears Roebuck Co.*, 82 Ill. App. 3d 995, 998 (1980) (concluding that dismissal with prejudice under Rule 219(c) was "not improper" in light of "plaintiff's repeated, unexplained, apparently deliberate failures to comply with discovery"); *Big Three Food & Liquor, Inc. v. State Farm Fire & Casualty Co.*, 79 Ill. App. 3d 63, 68 (1979) (affirming dismissal with prejudice pursuant to Rule 219(c) where the plaintiff's "absence of diligence" in complying with court orders and rules was "patent").

¶ 29 On January 8, 2013, defendants' attorney served a Rule 237(b) notice on plaintiff, requesting his appearance and availability to testify at the January 14, 2013 trial; plaintiff's counsel was copied by U.S. mail and by email. Plaintiff failed to comply with the notice. Rule 237(b), read in conjunction with Rule 219(c), arguably empowered the trial court to dismiss the case with prejudice. See *Walton*, 273 Ill. App. 3d at 359 (concluding that dismissal was inappropriate under the particular circumstances but noting that "[d]ismissal might have been an appropriate sanction against [the plaintiff] if a properly dated [Rule 237(b)] notice to appear at trial had been issued and [the plaintiff] had not appeared"); *Merrill Lynch, Pierce, Fenner & Smith v. Story*, 218 Ill. App. 3d 829, 833 (1991) (concluding that trial court did not abuse its discretion in entering default judgment based on defendant's failure to appear at trial after receiving a Rule 237(b) notice).

¶ 30 Rule 219(c) also provides, in part, that "[w]here a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Apparently acknowledging this requirement, defendants, citing *Chabowski v. Vacation Village Association*, 291 Ill. App. 3d 525, 528 (1997), contend that the "lack of a written finding on the part of the trial court under Rule 219(c) is not dispositive since the record clearly supports the trial court's ruling." We note that the *Chabowski* appellate court found that the trial court's failure to state its reasons in writing was not "*per se* reversible error, particularly where *** the trial court's order grants a written motion that spells out the reasons for the dismissal and those reasons are supported by the record." *Id.* In the instant case, although the dismissal order does not detail the court's reasoning in writing – and was not in response to a written motion by defendants – the dismissal was, in fact, supported by the record, as discussed below. Furthermore, we observe that Rule 237(b) provides that "[u]pon a failure to comply with the notice, the court may enter any order that is just, *including* any sanction or remedy provided for in Rule 219(c) that may be appropriate." Ill. S. Ct. R. 237(b) (eff. July 1, 2005) (Emphasis added). By its plain language, Rule 237(b) does not limit the trial court's remedies to those listed in Rule 219(c), but rather requires that the order is "just."

¶ 31 In any event, the Illinois Supreme Court has stated that "apart from Rule 219(c), a trial court, pursuant to its inherent authority, is empowered to dismiss a cause of action with prejudice for violations of court orders." *Sander*, 166 Ill. 2d at 65. "The recognition of the court's inherent authority is necessary to prevent undue delays in the disposition of cases caused by abuses of

procedural rules, and also to empower courts to control their dockets." *Id.* at 66. "Dismissal of a cause of action for failure to abide by court orders is justified only when the party has shown a deliberate and contumacious disregard for the court's authority." *Id.* at 68. "Where it becomes apparent that a party has willfully disregarded the authority of the court, and such disregard is likely to continue, the interests of that party in the lawsuit must bow to the interests of the opposing party." *Id.* at 69; see also *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 23-24 (2009) (affirming trial court order dismissing with prejudice fifth amended complaint where "plaintiff's repeated noncompliance caused the type of 'undue delays in the disposition of cases' that the circuit court has, in the exercise of its discretion, authority to curtail" [Citation.]).

¶ 32 Our review of the record leads us to conclude that the trial court did not abuse its discretion in dismissing plaintiff's case with prejudice. Upon resuming the January 14, 2013 proceedings after "passing" the case to allow defendants' counsel to attempt to contact plaintiff's counsel, the court detailed various instances of plaintiff and/or his counsel failing to appear in court or to comply with applicable deadlines. The court noted the "sporadic compliance, at best," with "the Court's case management orders and orders with respect to complying with statutory discovery and discovery pursuant to the Supreme Court Rules." The court's subsequent statements included the following: (a) "on December 21st, 2011, the case was called for status, and a procedural order was entered in the absence of the plaintiff or his counsel"; (b) "on April 25th, 2012, plaintiff did not appear in court";[4] (c) "[o]n June 11th -- plaintiff or his counsel did

[4]It appears that the hearing was held on April 26, 2012, not April 25.

not appear in court"; (d) "[o]n June 11th, 2012, the Court made a notation in its internal records indicating that compliance with prior discovery orders or other orders of court had not been complied with, and the Court admonished the plaintiff and defendants to organize their files and their thoughts so that compliance with the Court's orders would be accomplished, and the parties were admonished that future deadlines for compliance with discovery would be adhered to"; and (e) "[o]n July 19th, 2012, the Court indicates that the plaintiff and/or his counsel had not complied with discovery and admonished the parties that on the next court date, the trial date would be set." We note that the court's June 11, 2012 order required plaintiff to "respond to outstanding written discovery by Netco by June 12, 2012" which, based on the court's July 19 notes, plaintiff failed to do.

¶ 33 In addition, the record contains at least one other instance where plaintiff's counsel appeared to disregard the trial court's authority. In an order entered November 15, 2012 denying plaintiff's motion to reconsider the denial of his late demand for a jury trial, the court stated, in part, as follows:

> "This matter coming before the Court for status conference and for hearing on the plaintiff's motion to reconsider the Court's denial of the plaintiff's jury demand; the case being called and the attorneys being present at 9:30 a.m.; the court passing the case to hear other matters prior to hearing argument on the motion to reconsider; the Court recalling the case at 9:45 a.m. and at 10:15 a.m. for argument on the motion to reconsider, the plaintiff's attorney not being present in the courtroom at 9:45 a.m. and 10:15 a.m.; the defendants' attorneys being present at both times; the plaintiff's attorney appearing at

10:30 a.m. and the Court hearing argument on the motion to reconsider at that time ***" Based on this order, it appears that plaintiff's counsel left the courtroom for a period of time during a hearing on one of plaintiff's own motions.

¶ 34 Perhaps most significantly, neither plaintiff nor his counsel appeared in court on the January 14 trial date, despite the significant advance notice and the repeated reminders regarding such date, including the Rule 237(b) notice. In an order entered September 20, 2012, the trial court set the matter for trial on January 14, 2013. According to the court's comments during the January 14, 2013 proceedings, the parties were again advised of the trial date on November 15 and November 26, 2012.

¶ 35 On appeal, plaintiff alleges that on December 26, 2012 – nineteen days prior to the scheduled trial date – he "had a death in the family (his girl friend), and he was not available to his attorney." Plaintiff then states that, on the trial date, "attorney Steven A. Lang still was unsuccessful at contacting his client." Plaintiff acknowledges that neither he nor his counsel was in court on the scheduled trial date.

¶ 36 As the defendants point out, plaintiff failed to file a motion for a continuance on or before the trial date. He then failed to file a motion with the trial court to vacate or to otherwise reconsider the January 14 order. While we acknowledge plaintiff's personal loss, his purported explanation is unsupported, conclusory, and otherwise insufficient. We agree with defendants' characterization of plaintiff's proffered explanation as "an after-the-fact rationalization for inexcusable neglect that, moreover, is consistent with the repeated disregard of court orders that justifiably informed the trial court's January 14 dismissal of the action with prejudice." Simply

because neither plaintiff nor his counsel appeared for trial does not necessitate that a dismissal be for want of prosecution – and thus without prejudice – when, as here, the actions of plaintiff and his counsel throughout the case showed a "deliberate and contumacious disregard for the court's authority." *Sander*, 166 Ill. 2d at 68.

¶ 37 We recognize that dismissals with prejudice are "drastic sanctions and should only be employed when it appears that all other enforcement efforts of the court have failed to advance the litigation." *Sander*, 166 Ill. 2d at 67-68; *Shimanovsky*, 181 Ill. 2d at 123 (same). The trial court did not abuse its discretion in deciding that this was such a case. "[C]ourt rules and orders are not merely suggestions to be complied with if convenient" but instead "constitute obligations that counsel disregard at their *personal* peril and that trial courts must enforce." *Clymore*, 278 Ill. App. 3d at 869. (Emphasis in original).

¶ 38 Based on our conclusion that the trial court's dismissal with prejudice did not constitute an abuse of discretion, we need not address plaintiff's poorly articulated contentions regarding the asserted *res judicata* effect of the trial court's "order barring summary judgment motions" and "order allow[ing] his attorney" to appear *pro hac vice*.

¶ 39 CONCLUSION

¶ 40 For the reasons stated herein, we conclude that the trial court did not abuse its discretion in issuing a judgment dismissing plaintiff's cause of action with prejudice. We affirm the judgment of the trial court.

¶ 41 Affirmed.