

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted April 28, 2021*

Decided April 29, 2021

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 20-2466

JAMES STEWART,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 18-cv-03916

CREDIT CONTROL, LLC, et al.,
Defendants-Appellees.

John F. Kness,
Judge.

ORDER

Invoking the Fair Credit Reporting Act, 15 U.S.C. § 1681, and the Fair Debt Collection Practices Act, *id.* § 1692, James Stewart sued businesses that attempted to collect an unpaid debt. Discovery was contentious. During its course, Stewart violated three court orders to appear for his deposition despite a warning from the court that noncompliance could lead to dismissal. The defendants moved for dismissal as a

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

sanction for his refusal, and the district court granted the motion and ended the suit. Because that ruling was a permissible response to Stewart's disobedience, we affirm.

Discovery disputes, referred to a magistrate judge, began early. After the defendants said that some requested documents did not exist, Stewart moved to compel their production and sought sanctions. He filed 18 discovery-related motions, including four motions about sanctions. To resolve the matters, the magistrate judge asked the defense lawyers to submit a letter organizing the parties' discovery disputes. Stewart claimed he did not receive a copy of that letter before the next hearing, and so in addition to his motions to compel and for sanctions, he moved the magistrate judge to recuse himself as biased for having received an ex parte communication. The magistrate judge denied Stewart's motions. He ruled that the defendants had complied with the document requests, Stewart had received everything that the defendants had sent to the court, and the letter did not prejudice Stewart or establish judicial bias.

Stewart responded to these adverse rulings by defying orders to attend his deposition. In July 2019, the magistrate judge ordered him to appear for his deposition within 30 days. Just before the deadline, Stewart refused to obey that order, explaining that he wanted to hire a lawyer. At a hearing afterward, the magistrate judge excused Stewart's disobedience, giving him one month to secure counsel after which the judge would reschedule the deposition. The judge warned Stewart that if he again disobeyed an order to attend, there were "going to be some consequences." The month passed, and Stewart had not hired an attorney. As a result, the magistrate judge ordered his deposition to occur in the next month. The evening before that deadline, Stewart again told the defendants that he would not appear and again disobeyed the order.

Based on Stewart's defiance, the defendants moved for dismissal, but after a hearing, the magistrate judge gave Stewart one last chance to obey. Stewart defended his refusal by relitigating the discovery rulings about unproduced documents and judicial bias, grounding his arguments in the language of "due process." The magistrate judge patiently explained that, despite Stewart's dissatisfaction with the earlier rulings, he may not ignore court orders to attend a deposition. The judge admonished Stewart that he could recommend dismissing the case now as a result of Stewart's intransigence, but showing more forbearance, the judge denied the defendants' motion without prejudice, in order to give Stewart a third and "last chance." The judge ordered Stewart to appear at his deposition within 21 days. He warned that, if Stewart did not appear, there would "be severe consequences up to and including the dismissal of [his] case."

Stewart violated the court's order a third time, and the suit ended soon after. Instead of appearing for his deposition, Stewart moved to stay discovery "pursuant to due process concerns." The defendants renewed their motion for dismissal, and Stewart replied with his previously rejected defense that the defendants had not produced documents. This time, the magistrate judge recommended that the district court dismiss the case. In objecting to the recommendation, Stewart argued that the deposition violated his right against self-incrimination, dismissal was an "extreme" sanction for a pro se litigant, and the magistrate judge's refusal to recuse himself and the defendants' discovery violations justified his refusal to appear. The district court overruled the objections and accepted the magistrate judge's recommendation to dismiss the case. It explained that the Fifth Amendment does not allow civil litigants to avoid their own depositions; Stewart had received adequate time to find a lawyer; and he had three chances to obey an order to appear for his deposition. In light of his obstinate relitigation of discovery arguments that the magistrate judge had rejected and refusal to comply with the court's orders to appear for his deposition, the court reasoned that "no sanction short of dismissal ... [would] put these issues to rest."

On appeal, Stewart argues that the district court impermissibly dismissed the case. When a party willfully disobeys a discovery order, including an order to attend a deposition, the district court may sanction that party with dismissal. FED. R. CIV. P. 37(b)(2)(A)(v). We review for abuse of discretion a district court's decision to dismiss a case as a sanction for a plaintiff's willful disobedience of its orders. *See Aura Lamp & Lighting v. Int'l Trading*, 325 F.3d 903, 907, 909–910 (7th Cir. 2003). In arguing that the court abused its authority to dismiss, Stewart again cites his unanswered discovery requests, contests other discovery-management orders, and insists that he was "denied the opportunity to be heard."

The district court permissibly dismissed the case. First, it did so only after Stewart showed uncorrected and prolonged defiance, evincing willfulness: He violated three orders to appear for his deposition, even after the court warned him that defiance could lead to dismissal. Second, he received opportunities to explain his refusal, but his excuses—his desire for more documents—were deficient and persisted even after he was told that they were deficient. He never asserted, let alone established, that without the documents, or without discovery proceeding in a different order, he was incapable of complying with an order to show up at his deposition. Given his inexcusable, willful, and steadfast disobedience, the court's enforcement of its orders by dismissing the case was reasonable. *See Aura Lamp*, 325 F.3d at 909–10. Finally, to the extent that Stewart argues that the magistrate judge was "biased," the district judge reviewed de novo the

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magistrate judge's recommendation to dismiss and Stewart's objections to it. As we have just explained, the district judge's decision to dismiss was reasonable. We see no evidence of any bias on the magistrate judge's part. In fact, the magistrate judge patiently addressed the voluminous discovery disputes in this case.

AFFIRMED