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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JESUSA RESURRECCION,

Plaintiff and Appellant,

v.

NORTHEAST COMMUNITY CLINIC,

Defendant and Respondent.

B239289

(Los Angeles County Super. Ct.
No. BC447755)

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed.

The Law Office of Roland Y. Ho and Roland Y. Ho for Plaintiff and Appellant.

Beam, Brobeck, West, Borges & Rosa, Stephen A. Rosa and Fredrick M. Borges
for Defendant and Respondent.

Plaintiff and appellant Jesusa Resurreccion appeals from a judgment in favor of defendant and respondent Northeast Community Clinic in this wrongful termination action. Resurreccion contends the trial court abused its discretion by: 1) denying her request for monetary sanctions as to three motions to compel discovery responses; 2) denying her request for monetary sanctions for failing to have an insurance company representative present at mediation; and 3) denying her motion for cost-of-proof sanctions based on requests for admission. We find no abuse of discretion as to any of the motions and therefore affirm.

FACTS AND PROCEDURAL BACKGROUND

Resurreccion filed a wrongful termination complaint against her former employer Northeast on December 6, 2010. She filed the operative third amended complaint on June 16, 2011.

The parties exchanged correspondence regarding discovery issues. Resurreccion filed a motion to compel further responses that was taken off calendar in May 2011, because it improperly combined motions. Additional correspondence was exchanged in June 2011 to clarify Resurreccion's requests. On June 28, 2011, Resurreccion sent a letter demanding supplemental responses by July 5, 2011, or she would file motions to compel. On July 7 or 8, 2011, Resurreccion filed motions to compel further responses to interrogatories, further responses to her request for admissions, and production of documents. Each motion requested sanctions.

Northeast opposed each motion by stating that further responses had been provided within days of receipt of the motion. Northeast's attorney declared that he had been on vacation from June 29 through July 4, 2011. He returned to the office on July 5, 2011, and began work on the responses immediately. Although Northeast had provided responses in good faith, Resurreccion's attorney refused to take the motions to compel off calendar, because he wanted to pursue monetary sanctions. Resurreccion filed a reply stating there had been a lack of cooperation in providing discovery throughout the action,

responses were not received until after the motions to compel were filed, and sanctions were appropriate.

A hearing was held on August 26, 2011. The trial court found the motions to compel were moot, took them off calendar, and denied sanctions. Resurreccion's attorney argued that the supplemental responses were still inadequate, but the trial court noted the parties would need to meet and confer before any action could be taken as to the supplemental responses.

Resurreccion filed a motion seeking monetary sanctions for not complying with mediation rules, because no authorized representative from the insurance company was present at the mediation. Northeast opposed the motion. Northeast's attorney declared that no settlement demand had been made prior to the mediation and Northeast's position was that it would not consent to settlement. Northeast's attorney explained to the mediator that under the terms of the insurance policy, Northeast had the authority to consent or not consent to settlement. The insurance company was located on the east coast, but a representative of the insurance company was available by telephone if needed. The mediation went forward. Resurreccion made a settlement demand at the mediation, but Northeast refused to consent to settlement or make a counteroffer. The mediation terminated. Resurreccion filed a reply arguing that an insurance representative would have had authority to recommend settlement and Northeast should have obtained the mediator's consent to excuse the insurance representative prior to the mediation.

A hearing was held on the request for sanctions related to the mediation on October 7, 2011. The trial court denied the motion. The court stated that Resurreccion could not get monetary sanctions for what happened in this instance. The court also found the insurance adjustor was available and the policy was unusual, because it provided Northeast with the right to consent to settlement. Resurreccion argued the mediator's consent could not be given at the time of mediation. The court found it was sufficient that the insurance adjustor was available by telephone, the attorney knew that Northeast was unwilling to settle the matter, and the mediator was willing to proceed.

A jury trial was held. Only a small portion of the reporter's transcript of the trial has been provided in the record on appeal. The jury found in favor of Northeast on all causes of action. Specifically, the jury found: Northeast did not promise to discharge Resurreccion only for good cause; Resurreccion's age was not a motivating reason for her discharge; and Resurreccion's age discrimination and/or reporting of violations was not a motivating reason for her discharge. The trial court entered judgment in favor of Northeast on December 20, 2011.

Resurreccion filed a motion for sanctions to recover the cost of proving certain clinic locations lacked certification to provide certain programs and bills for services in those programs were fraudulently made through the clinic locations that had the certifications. In discovery, she had propounded requests for admissions to Northeast seeking admissions that the Wilmington facility had not had the required certification or approval to operate four different programs. Northeast had responded with objections and denials as to each certification or approval. Resurreccion had to expend substantial effort to prove the issue at trial.

In opposition, Northeast argued the jury made no finding to support Resurreccion's claim that she proved the truth of the matters asserted in her motion. In addition, the matter was not material and the requests for admission were vague.

A hearing was held on January 20, 2012. The trial court found that Resurreccion failed to show that she had proved the truth of the certification issues at trial. Also, Resurreccion never made a motion seeking further responses on this issue. The admissions were not material, since the jury found Resurreccion was not terminated based on her age or other public policy violation. The court denied the motion. Resurreccion filed a timely notice of appeal from the judgment and the postjudgment order.

DISCUSSION

Discovery Motions

Resurreccion contends the trial court should have imposed sanctions on Northeast as to three of her motions to compel discovery. We find no abuse of discretion.

“We review discovery orders for an abuse of discretion. [Citation.]” (*Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1102.)

In this case, the trial court was in the best position to determine whether Northeast acted reasonably with respect to discovery, including seeking clarification of Resurreccion’s requests. After Resurreccion’s original motion to compel was taken off calendar, it was Northeast that initiated the meet and confer process as to Resurreccion’s discovery needs. It was understandable that the vacation of Northeast’s attorney over a holiday weekend prevented Northeast from providing responses before the July 5, 2011 deadline imposed by Resurreccion. Northeast provided responses more than a month before the hearing on the motions to compel. The court’s ruling was not clearly arbitrary, capricious or whimsical. (*Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.*, *supra*, 163 Cal.App.4th at p. 1102.) We find no abuse of discretion.

Mediation

Resurreccion contends the trial court abused its discretion by not imposing sanctions as to the mediation. We disagree.

California Rules of Court, rule 3.894(a)(2) provides: “If any party is insured under a policy of insurance that provides or may provide coverage for a claim that is a subject of the action, a representative of the insurer with authority to settle or recommend settlement of the claim must attend all mediation sessions in person, unless excused or permitted to attend by telephone as provided in (3).”

California Rules of Court, rule 3.894(a)(3) provides: “The mediator may excuse a party, attorney, or representative from the requirement to attend a mediation session under (1) or (2) or permit attendance by telephone. The party, attorney, or representative who is excused or permitted to attend by telephone must promptly send a letter or an electronic communication to the mediator and to all parties confirming the excuse or permission.”

Resurreccion contends that sanctions for failing to have an insurance company representative appear at the mediation should have been imposed under California Rules of Court, rule 2.30(b), which provides: “In addition to any other sanctions permitted by law, the court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the court or an aggrieved person, or both, for failure without good cause to comply with the applicable rules. For the purposes of this rule, ‘person’ means a party, a party’s attorney, a witness, and an insurer or any other individual or entity whose consent is necessary for the disposition of the case. If a failure to comply with an applicable rule is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party’s cause of action or defense thereto.” Resurreccion also relies on the similar provisions of Los Angeles Superior Court, rules 3.10 and 3.272.

““The imposition of sanctions, monetary or otherwise, is within the discretion of the trial court. That discretion must be exercised in a reasonable manner with one of the statutorily authorized purposes in mind and must be guided by existing legal standards as adapted to the current circumstances. . . . [Citation.]’ [Citation.]” (*Winikow v. Superior Court* (2000) 82 Cal.App.4th 719, 726.)

In this case, the trial court exercised its discretion by declining to impose monetary sanctions for Northeast’s failure to have a representative of the insurance company present at the mediation. The insurance company was located on the east coast and a representative was available by telephone. Northeast had the power under its insurance contract to refuse any settlement and did not intend to consent to settle with this plaintiff. Although the mediator’s consent should have been obtained in advance under California

Rules of Court, rule 3.894(a)(3), the mediator chose to proceed with the mediation. The court was within its discretion not to impose monetary sanctions for the failure to have a representative of the insurance company present at the mediation.

Cost of Proof Sanctions

Resurreccion contends the trial court should have imposed sanctions for the cost of proving the Wilmington facility did not have certain certifications and approvals. The record is inadequate to review this contention, because Resurreccion has failed to provide a complete trial transcript. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) More importantly, the jury did not make any finding in favor of Resurreccion on this issue. Northeast denied that the Wilmington facility lacked the certifications and there is no finding otherwise. The trial court did not abuse its discretion when it denied the motion requesting cost of proof sanctions.

DISPOSITION

The judgment is affirmed. Respondent Northeast Community Clinic is awarded its costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.