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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0789**

Ali Dunham,
Appellant,

Audian Dunham,
Appellant,

vs.

Darin Opperman,
Respondent.

**Filed April 14, 2009
Affirmed
Klaphake, Judge**

Hennepin County District Court
File No. 27-CV-04-006654

Ali Dunham, 700 Alvarado Lane North, Plymouth, MN 55447 (pro se appellant)

Audian Dunham, 700 Alvarado Lane North, Plymouth, MN 55447 (pro se appellant)

Andrew T. Shern, Murnane Brandt, 30 East Seventh Street, Suite 3200, St. Paul, MN
55101 (for respondent)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Pro se appellants Ali and Audian Dunham challenge the district court's dismissal of their tort-based lawsuit as a final sanction for their failure to pay a \$35,000 sanction previously ordered for committing fraud on the court. Because we observe no abuse of discretion in either the court's order that appellants pay respondent Darin Opperman \$35,000 for attorney fees or in its judgment dismissing the case with prejudice for failure to pay that monetary sanction, we affirm.

DECISION

A district court has broad discretion during the pendency of a case to order sanctions, including the payment of costs and attorney fees. *See Kellar v. Von Holtum*, 605 N.W.2d 696, 702 (Minn. 2000) (ruling that district court has broad discretion in awarding the type of sanctions it deems necessary); *Jadwin v. Kasal*, 318 N.W.2d 844, 848 (Minn. 1982) (ruling that district court has broad discretion in awarding attorney fees). "Costs and attorney fees may be awarded against a party who acts in bad faith, asserts a frivolous claim or unfounded position or commits a fraud upon the court." *Glarner v. Time Ins. Co.*, 465 N.W.2d 591, 597 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991); *see* Minn. R. Civ. P. 37.02 (b)(3), 37.04 (permitting district court to impose sanctions, including claim dismissal, for discovery violations). "Our legal system depends on the truthfulness of the testimony of witnesses and false testimony strikes at the very heart of the administration of justice." *In re Salmen*, 484 N.W.2d 253, 254 (Minn. 1992). A party "challenging the [district] court's choice of a sanction has the

difficult burden of convincing an appellate court that the [district] court abused its discretion—a burden which is met only when it is clear that no reasonable person would agree with the [district] court’s assessment of what sanctions are appropriate.” *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995) (quotation omitted).

1. *\$35,000 Sanction*

Appellants first challenge the imposition of \$35,000 ordered as a monetary sanction to cover respondent’s costs and attorney fees. “Rule 37.02 favors the award of expenses, including reasonable attorney[] fees, to the party bringing a meritorious motion for imposition of sanctions.” 1A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 37.10 (4th ed. 2003). The amount of fees to be awarded, like any sanction, is subject to the district court’s discretion. *Norwest Bank Midland v. Shinnick*, 402 N.W.2d 818, 823 (Minn. App. 1987).

This court initially considered whether appellants’ conduct merited an award of monetary sanctions in *Dunham v. Opperman*, No. A06-750, 2007 WL 1191599 (Minn. App. Apr. 24, 2007), *review denied* (Minn. July 17, 2007). There, this court ruled that case dismissal was improper when appellants had not violated a direct court order and had not received a prior warning that their conduct could result in dismissal of their action with prejudice. *Dunham*, 2007 WL 1191599, at *11. But this court upheld the award of monetary sanctions and specifically stated that upon remand the district court retained authority to order further sanctions short of case dismissal to address appellants’ egregious conduct. *Id.* at *12.

The additional monetary sanction ordered by the district court on remand was reasonable. Appellant Ali Dunham was informed by the district court that her golf schedule was not a factor to be considered in scheduling her deposition, but she disregarded that directive by deliberately choosing to play golf during the time of her deposition. She then lied to the court about her reason for failing to attend her deposition, lied repeatedly under oath when presented with the true facts about her whereabouts at the time of her deposition, and now refers to her lies as a mere failure to “volunteer” information. Appellant Audian Dunham also told lies to corroborate Ali Dunham’s story, including lying to the court about being given permission to change time slots with his wife for their depositions. In 2005, the district court judge, who was in a position to observe appellants’ conduct first-hand during pretrial proceedings, found that “[t]here is nothing to indicate to this [c]ourt that [appellants] will not submit perjured testimony in the future, or that a significant monetary sanction would serve to ensure the discontinuance of this outrageous conduct.” These facts support an award of monetary sanctions.

Appellants further claim that the amount of the sanctions award was excessive. However, the sanction was imposed for appellants’ disregard of the court’s authority and their challenge to the integrity of the judicial system, and, as such, was not tied to the actual amount of attorney fees incurred. In moving for sanctions on remand, respondent’s attorney stressed the deterrent, rather than compensatory, nature of the monetary sanctions sought. *See* Minn. R. Civ. P. 37.04 (specifically allowing imposition of attorney fees as sanction for a party’s failure to attend a deposition). In addition,

respondent's counsel submitted affidavits stating that their attorney fees and costs each totaled more than \$40,000 for their work pertaining to the sanctions issues. Thus, we conclude that the \$35,000 amount of the sanction was reasonable and did not constitute an abuse of discretion.

2. *Case Dismissal Sanction*

Case dismissal is a “drastic” measure that amounts to “the most punitive sanction which can be imposed,” and it “should be granted only under exceptional circumstances.” *Beal v. Reinertson*, 298 Minn. 542, 544, 215 N.W.2d 57, 58-59 (1974) (quotation omitted) (reversing dismissal with prejudice as sanction for failure to comply with discovery order). Appellants claim that their conduct did not merit case dismissal.

The propriety of this sanction was also addressed by this court in *Dunham*. There, the court noted that while it was a “close case,” appellants’ conduct did not amount to refusal to comply with a court order, unlike the conduct meriting case dismissal in other Minnesota cases, and appellants did not receive a warning before being subject to this harsh sanction. *Dunham*, 2007 WL 1191599, at *11. Following *Dunham*, however, the district court’s January 10, 2008 sanctions order provided appellants adequate warning of the possibility of case dismissal for further failures to follow court orders. That order specifically warned appellants that failure to pay the \$35,000 sanction by February 29, 2008, would result in case dismissal on the merits. The order also contained two warnings that further deception by appellants would result in case dismissal. Without any excuse, appellants failed to pay the \$35,000 sanction. Under these circumstances, the district court did not abuse its discretion in ordering the case dismissed with prejudice.

See Breza v. Schmitz, 311 Minn. 236, 237, 248 N.W.2d 921, 922 (1977) (affirming dismissal of case on the merits for failure to comply with discovery orders, including failure to appear for deposition); *O'Neil v. Corrick*, 307 Minn. 497, 497-98, 239 N.W.2d 230, 230 (1976) (affirming dismissal of case on merits for plaintiff's failure to completely answer interrogatories); *Williams v. Grand Lodge of Freemasonry AF & AM*, 355 N.W.2d 477, 480 (Minn. App. 1984) (affirming case dismissal on the merits for repeated failure to appear for scheduled deposition), *review denied* (Minn. Dec. 20, 1984).

Affirmed.