

NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05-CVS-13534

SEP 23 PM 3:41
CLERK OF SUPERIOR COURT, C.S.C.

REBECCA HEMENWAY,
Plaintiff,

v.

ERNEST A. HEMENWAY and LIMMY
SUMMERVILLE,
Defendants.

ORDER

The Court heard this matter on September 22, 2006, on an Administrative Notice and Order for Show Cause (the "Show Cause Order") issued by Senior Resident Superior Court Judge Robert P. Johnston. The Show Cause Order required counsel for the parties and the mediator to appear and Show Cause for their failure to comply with the Court's rules and scheduling orders regarding mediated settlement conferences. After hearing from the counsel of record and the mediator (or their representatives), the Court sanctioned John P. Barringer ("Barringer"), Andrew S. Culicerto ("Culicerto"), C. Ashley Lamm ("Lamm"), and Frank F. Voler ("Voler") \$100.00 each. The Court did not sanction the mediator William H. Helms ("Helms"). In further support of this sanction, and after reviewing the Court file, the Court makes the following

FINDINGS OF FACT

1. On December 16, 2005, the Court set an April 3, 2006 deadline for completion of mediation in this case.

2. On December 29, 2005, the parties selected and the Court appointed Helms as the mediator.

3. On or about April 13, 2006, the Court served written notice on all counsel and the mediator that the deadline for completing mediation had expired.

4. On April 25, 2006, the parties sought and were granted an extension of time in which to complete the mediated settlement conference, up to and including June 5, 2006.

5. The case was set for trial on June 26, 2006.

6. On June 7, 2006, the parties sought and were granted a continuance of the trial date. The case was rescheduled for trial during the week of September 18, 2006. The parties also requested that the Court revise the original scheduling order, but no action was taken on that request.

7. The parties sought no further extensions of time to complete the mediated settlement conference. On June 23, 2006, the Court served written notice on all counsel and the mediator that the June 5, 2006 deadline for completing mediation had expired. That notice also made clear that the parties' failure to respond would result in their being placed on the Show Cause calendar.

8. On July 19, 2006, Voler filed a motion seeking to compel mediation. In his motion, Voler blamed the parties' failure to mediate on the Plaintiff for failing to schedule the conference. That motion was set for hearing on July 26, 2006.

9. On or about July 21, 2006, the Court served its Show Cause Order on all counsel and on the mediator.

10. On July 25, 2006, Voler withdrew his motion to compel mediation.

11. On July 31, 2006, the parties mediated this case and were able to settle some of the issues in the lawsuit.

12. At the hearing of this matter, counsel advised the Court that Helms bore no responsibility for the parties' failure to comply with the June 5, 2006 mediation deadline.

Based on these findings of fact, the Court enters the following

CONCLUSIONS OF LAW

1. Rule 1A of the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions (the "Mediation Rules") emphasizes that

these Rules are promulgated to implement a system of settlement events which are designed to focus the parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place.

To promote these ends, the Court establishes deadlines, both for the selection of a mediator and for the completion of the mediated settlement conference.

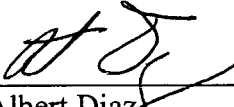
2. The mediation rules do not provide for the imposition of sanctions for parties and attorneys who fail to abide by the Court's scheduling orders with respect to mediation. "Even absent an express grant of authority, however, trial courts have inherent authority to impose sanctions for willful failure to comply with the rules of court." *Few v. Hammack Enter., Inc.*, 132 N.C. App. 291, 298, 511 S.E.2d 665, 670 (1995).

3. After considering the explanations provided by counsel for their failure to abide by the Court's deadlines (or to obtain a further extension of time in which to comply), I conclude that such failure here was in fact willful and without good cause.

4. Accordingly, attorneys Barringer, Lamm, Culicerto, and Voler are each sanctioned \$100.00, said sanction payable to the Mecklenburg County Clerk of Court within 30 days of the entry of this Order.

5. All parties are warned that their failure to comply with this Order will subject them to criminal and/or civil contempt.

SO ORDERED, this 20th day of October, 2006.



Albert Diaz
Special Superior Court Judge