

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CHARLES E. SPARRGROVE, III  
and JANE M. SPARRGROVE,

Plaintiff,

v.

CLIFFORD WACHTER, TRUDY WACHTER,  
CLARK KEPPLINGER, ANDREA BAKER,  
DEAN HOULBERG and  
BANK OF MONTICELLO,

Defendants.  
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OPINION AND  
ORDER

04-C-21-C

This case began as a bankruptcy filing under Title 11 in the United States Bankruptcy Court in the Western District of Wisconsin, case number 03-18173. Plaintiffs Charles and Jane Sparrgrove filed this adversary complaint, which was automatically referred to the bankruptcy court. In an opinion and order dated February 20, 2004, I withdrew this reference. In a second opinion and order dated August 4, 2004, I granted the motion filed by defendants Clifford Wachter, Trudy Wachter, Clark Kepplinger, Andrea Baker, Dean Houlberg and Bank of Monticello to dismiss the case pursuant to Fed. R. Civ. P. 37(b)(2) for failure to comply with discovery rules after finding that plaintiffs had failed to comply

with the court's order to submit to a deposition without evasion or improper invocation of a privilege.

Under Fed. R. Civ. P. 37(b)(2), courts must require a party failing to comply with a discovery order to pay the expenses caused by the failure unless the court concludes that the violation was "substantially justified or that other circumstances make an award of expenses unjust." Because I found no substantial justification or other circumstances, I ordered that in addition to dismissal, plaintiffs would be held jointly and severally liable to the moving defendants for the costs and fees they incurred as a result of a failed attempt to take plaintiffs' depositions on June 4, 2004 and in filing their Rule 37 motion for sanctions.

District courts have broad discretion in imposing sanctions and will be overturned only upon an abuse of discretion. Tamari v. Bache & Co. (Lebanon) S.A.L., 729 F.2d 469, 472 (7th Cir. 1984). Despite this discretion, they must explain the basis for a sanction and may not simply choose an arbitrary figure. Martin v. Brown, 63 F.3d 1252, 1263 (3d Cir. 1995); see also Carlucci v. Piper Aircraft Corp., 775 F.2d 1440 (11th Cir. 1985) (finding district court order to be deficient for failure to explain basis for \$10,000 sanction). Expenses that may be awarded include attorney fees but are limited to what is reasonable. Fed. R. Civ. P. 37.

Defendants have now submitted the affidavit of their attorney, Paul Schwarzenbart, itemizing the expenses incurred at the failed depositions and in preparing the motion and

supporting materials seeking sanctions. According to this affidavit, those expenses total \$6,586.40 and include \$60.15 for mileage, \$193.20 for a transcript of the failed deposition, \$195.80 for photocopies, \$19.75 for postage and \$6,117.50 in attorney fees. Schartzzenbart provides time entries showing that he spent 18 hours and that another attorney with whom he works, Chad Koplien, spent 11.3 hours as a result of plaintiffs' violation. These numbers account for the time each spent attending the failed deposition and preparing a nineteen-page brief and five affidavits in support of the motion for sanctions. According to the affidavit, Schartzzenbart charges an hourly rate of \$230 and Koplien charges \$175 for each hour. Plaintiffs have not filed an objection to this affidavit. I am satisfied that these costs are modest and reasonably incurred as a result of plaintiffs' discovery violation. Accordingly, I will sanction plaintiffs \$6,586.40.

Defendants request that the court aggregate this sanction with an award ordered on May 24, 2004. In that order, plaintiffs were directed to pay defendants \$3,268.91 by June 21, 2004, as a sanction relating to to defendants' motion to compel discovery. According to Schartzzenbart's affidavit, plaintiffs have not paid this amount. The May 24 order remains in full effect. Unless I were to vacate that order, adding the \$3,268.91 to the sum awarded herein would have the unfair and unintended result of doubling the \$3,268.91 sanction. A simpler resolution is to allow defendants to aggregate their request for enforcement of these awards should it become necessary.

Therefore, IT IS ORDERED that defendants Clifford Wachter, Trudy Wachter, Clark Kepplinger, Andrea Baker, Dean Houlberg and Bank of Monticello are awarded \$6,586.40 jointly for the expenses they incurred as a result of plaintiffs Charles Sparrgrove, III and Jane Sparrgrove failure to comply with a discovery order. Plaintiffs are jointly and severally liable to defendants for this amount.

Entered this 22nd day of October, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge