

STATE OF NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 583

WESTON DAVIS,

Plaintiff,

v.

DAVIS FUNERAL SERVICE, INC.;  
and PHILLIP TILLMAN, Vice  
President (individually and as an  
officer of Davis Funeral Service, Inc.),

Defendants/Third-  
Party Plaintiffs,

v.

DEIDRA TEDDER,

Third-Party  
Defendant.

**ORDER AND  
OPINION FOLLOWING  
SHOW CAUSE HEARING**

*Brown & Associates, PLLC, by Donald Mitchell Brown, for Plaintiff  
Weston Davis.*

*Burns, Gray & Gray, by John T. Burns and Christopher A. Gray, for  
Defendants Davis Funeral Service, Inc. and Phillip Tillman.*

*Villmer Caudill, PLLC, by Bo Caudill, for Third-Party Defendant Deidre  
Tedder.*

Conrad, Judge.

1. Timely compliance with court orders is essential to the fair and efficient administration of justice. Here, Plaintiff Weston Davis and Defendants Davis Funeral Service, Inc. and Phillip Tillman disregarded deadlines for two mandatory pretrial submissions, resulting in the cancellation of a scheduled jury trial. The Court directed both sides to appear and show cause why they should not be sanctioned.

After careful consideration and following a hearing on 26 February 2024, the Court now rules as follows.

2. This case arises from an employment dispute. Davis is Davis Funeral Service's past president. After the company fired him in late 2021, Davis sued it and its officers, including Tillman, for unpaid wages and defamation. Davis Funeral Service counterclaimed based on allegations that Davis breached his fiduciary duties during his tenure as president. Davis Funeral Service also asserted third-party claims against another former employee, Deidre Tedder, who then counterclaimed for unpaid wages.

3. At summary judgment, the Court narrowed Davis's claims, dismissed Davis Funeral Service's third-party claims against Tedder, and concluded that Davis Funeral Service was liable to Tedder as a matter of law on her counterclaims. *See Davis v. Davis Funeral Serv., Inc.*, 2023 NCBC LEXIS 133 (N.C. Super. Ct. Oct. 25, 2023); *Davis v. Davis Funeral Serv., Inc.*, 2023 NCBC LEXIS 79 (N.C. Super. Ct. June 12, 2023).<sup>\*</sup> After these decisions, the parties jointly moved for separate trials on the remaining issues: a jury trial on the claims and counterclaims between Davis and Davis Funeral Service to be followed by a bench trial on the damages that Tedder is entitled to recover from Davis Funeral Service. (*See* ECF No. 69.) The Court granted that motion. (*See* ECF No. 70.)

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<sup>\*</sup> Having resolved the motions for summary judgment, the Court ordered the parties' counsel to confer and report by e-mail their estimate of the length of trial for the remaining claims and counterclaims on or before 30 October 2023. Tedder's counsel timely submitted an estimate on her behalf and on Davis's behalf. Counsel for Davis Funeral Service and Tillman ignored the order and submitted their estimate only after receiving an inquiry from the Court.

4. With counsel's consent, the Court set the jury trial to begin on 11 March 2024. The Court also issued a pretrial scheduling order, which required the parties (excluding Tedder) to submit their proposed pretrial order no later than 5 February 2024 and their proposed verdict forms and jury instructions no later than 19 February 2024. (*See* Pretrial Sched. Order, ECF No. 73.) The final pretrial hearing was to follow on 26 February 2024.

5. Davis, Davis Funeral Service, and Tillman did not submit their proposed pretrial order on time. Three days after the deadline expired, the Court issued an order directing them to cure their noncompliance immediately and warning that a further lapse may result in sanctions, including dismissal of all pending claims. (*See* Order Regarding Failure to Comply with Pretrial Sched. Order, ECF No. 79.) Only then did they file the proposed pretrial order.

6. Just days later, and despite the warning, both sides missed the deadline to file proposed verdict forms and jury instructions. This second violation was one too many. The Court canceled the pretrial hearing, canceled the trial, and directed both sides to appear and show cause why they should not be sanctioned for disregarding its orders. The Court also advised that it was "considering severe sanctions, including the dismissal of Plaintiff's claims and Defendants' counterclaims," and gave these parties a chance to explain their conduct in writing. (Order Regarding Further Failure to Comply with Pretrial Sched. Order ¶ 6(c), ECF No. 82.)

7. Strikingly, Davis Funeral Service and Tillman chose not to submit a written statement. And at the hearing, their counsel offered no explanation or justification

whatsoever for having disregarded court-ordered filing deadlines. Davis's counsel did file a written statement to disclose a personal matter that made it harder for him to meet the relevant deadlines. But he did not explain why he chose to ignore the deadlines rather than ask to extend them, especially after having received the Court's warning.

8. Disobedience to court orders is no small matter. That is why the Rules of Civil Procedure authorize trial courts to dismiss a claim or action when a party fails to comply with "any order of court." N.C. R. Civ. P. 41(b). Indeed, "the power to sanction disobedient parties, even to the point of dismissing their actions or striking their defenses, did not originate with Rule 41(b). It is longstanding and inherent." *Minor v. Minor*, 62 N.C. App. 750, 752 (1983); *see also Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 57, at \*39 (N.C. Super. Ct. Sept. 3, 2019).

9. As federal courts have stressed, "[t]his principle applies with undiminished force to scheduling orders." *Tower Ventures, Inc. v. City of Westfield*, 296 F.3d 43, 46 (1st Cir. 2002). "A scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). "To manage a crowded calendar efficiently and effectively, a trial court must take an active role in case management. Scheduling orders are essential tools in that process—and a party's disregard of such orders robs them of their utility." *Tower Ventures*, 296 F.3d at 46. Put another way, "a court cannot effectively manage a case when its orders are viewed by counsel not as mandates to be followed, but as suggestions to be complied with if, when and how

counsel's judgment dictates." *Loop AI Labs Inc. v. Gatti*, 2017 U.S. Dist. LEXIS 34109, at \*44 (N.D. Cal. Mar. 9, 2017).

10. So it is here. Jury trials are demanding: they take time, tax judicial resources, and crowd out other cases on the docket. One purpose of a pretrial scheduling order is to conserve resources by ensuring that a case set for trial is ready to proceed without delay. The parties' repeated failures to comply with the pretrial scheduling order in this case thwarted that purpose, necessitating the cancellation of a trial that had been scheduled for months and forcing the Court to spend its time policing their compliance instead of attending to other matters.

11. Among those other matters is the bench trial on Tedder's damages. After separating the issues for trial, the Court deferred the bench trial to accommodate the jury trial on Davis's dispute with Davis Funeral Service and Tillman. Now, the jury trial is canceled, and Tedder is no closer to seeing her claims to the finish line than she was at the time the trials were separated. Through no fault of her own, her right to resolve her claims expeditiously has been frustrated.

12. Perhaps most disconcerting is the lack of any satisfying explanation. This is especially true for the second missed deadline, which came on the heels of an express warning to the parties to comply with the pretrial scheduling order or ignore it at their peril. Davis Funeral Service and Tillman concede that they had no reason at all, much less a good one, for defying two court-ordered deadlines. Davis pointed to circumstances that could have supported an extension of at least one of those deadlines if only he had asked. And there's the rub: rather than take the simple step

of asking for relief, the parties ignored the deadline to submit verdict forms and jury instructions and dared the Court to make good on its warning that further noncompliance would result in sanctions.

13. In short, by repeatedly disregarding judicial directives, Davis, Davis Funeral Service, and Tillman have wasted the Court's resources, prejudiced Tedder, and interfered with the expeditious resolution of this litigation. Their conduct merits sanctions.

14. The most drastic sanction—dismissal with prejudice—would be too harsh. Courts strive to decide cases on their merits, not on procedural lapses. The parties' conduct is not so egregious that they have forfeited all right to pursue relief against one another. *See Wilder v. Wilder*, 146 N.C. App. 574, 576 (2001) (stating that “claims should be involuntarily dismissed only when lesser sanctions are not appropriate to remedy [a] procedural violation,” given that one “underlying purpose of the judicial system is to decide cases on their merits”).

15. Dismissal without prejudice, on the other hand, is a befitting and less drastic sanction. This is a strong sanction that upholds the integrity of the judicial process and underscores the need to comply with court orders. At the same time, it leaves the parties free to litigate their claims against one another in the future. *See Foy v. Hunter*, 106 N.C. App. 614, 620 (1992) (describing “dismissal without prejudice” as a “[l]ess drastic sanction[]”); *Miller v. Ferree*, 84 N.C. App. 135, 137 (1987) (same).

16. Moreover, no other lesser sanction is up to the task. Most sanctions are designed to coerce a wayward party to fulfill its obligations and to mitigate prejudice

to the other parties. What makes this case uniquely distressing is that both sides are equally at fault, which narrows the range of suitable sanctions. Monetary sanctions, for example, would cancel out and serve no purpose. Evidentiary sanctions (that is, excluding witnesses or exhibits) might inequitably affect one side more than the other and would very likely put both sides in a worse position than a dismissal without prejudice. The most equitable and appropriate sanction for the parties' mutual disregard of court orders is to clean the slate and dismiss their claims and counterclaims without prejudice.

17. Accordingly, in its discretion, the Court **ORDERS** that Plaintiff Weston Davis's complaint and Defendants' counterclaims are dismissed without prejudice, and they shall bear their own costs.

**SO ORDERED**, this the 15th day of March, 2024.

/s/ Adam M. Conrad  
Adam M. Conrad  
Special Superior Court Judge  
for Complex Business Cases