BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN RE: OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 272-2019:

JESSICA CRABB,	)	HRB Case No. 0180152
	)	
Charging Party,	)	
	)	
vs.	)	**ORDER DISMISSING**
	)	
COVERED WAGON MOBILE HOME PARK,	)	
	)	
Respondent.	)	

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I. INTRODUCTION[1]

On March 18, 2019, the hearing officer issued notice of her intent to dismiss the claim of Jessica Crabb due to the continued discovery abuses and obstructive behavior of her authorized agent, Jorge Pareja. The parties were allowed an opportunity to submit written argument as to whether the matter should be dismissed. Additionally, the Montana Human Rights Bureau was also given an opportunity to intervene. The deadline for filing such argument was April 19, 2019.

On March 21, 2019, Pareja submitted a series of filings on behalf of Crabb that included a request for Pareja's removal from the case; a request for damages for the suffering Pareja has suffered while assisting Crabb in the prosecution of her claim; a motion to redact the order issued by the hearing officer on December 7, 2018 granting Covered Wagon Mobile Home Park's (Covered Wagon) request to compel Crabb's discovery responses; and a motion to dismiss with prejudice and motion for summary judgment.

On March 27, 2019, Covered Wagon filed its response in opposition to Crabb's March 18, 2019 motions. Covered Wagon argued the motions are untimely

[1] *See* Order Granting Respondent's Motion to Dismiss and Notice of Intent to Dismiss issued on March 18, 2019 for a complete recitation of the procedural background in this matter.

and should be denied. Covered Wagon also argued that Crabb's Charge of Discrimination should be granted based upon the continued obstruction of Covered Wagon's right to conduct discovery by Crabb and Pareja.

On March 28, and March 29, 2019, Pareja and Covered Wagon sent a series of emails to the Office of Administrative Hearings (OAH) arguing about the timeliness of documents mailed on March 17, 2019. None of the emails were responsive to the hearing officer's notice of her intent to dismiss.

On April 4, 2019, Crabb filed a response to the notice of intent to dismiss arguing that the hearing officer has allowed Covered Wagon to abuse the discovery process because the focus has not been on the snow berm that lies in the roadway and not the driveway. Crabb demanded a "complete halt" to the process until her allegations are investigated. Crabb concluded the response with the statement that the fact issue in this case is the snow berm that lies in the roadway. The response was signed by both Crabb and Pareja.

On April 6, 2019, Pareja sent an email to OAH and Covered Wagon counsel arguing about the timeliness of the documents mailed on March 17, 2019. Pareja argues he has been defamed by Covered Wagon by their allegation that the mailing was not timely. Pareja concluded the e-mail by alleging the hearing officer had "pulled [him] back into the case after he submitted the notice of his removal, thereby nullifying it!"

II. DISCUSSION

Administrative Rules of Montana 24.8.749 provides: "The methods, scope, and procedures of discovery are those governed and permitted by the Montana Rules of Civil Procedure . . .". Rule 37(b), Mont.R.Civ.P. provides that sanctions may be imposed where a party fails to obey a discovery order or to permit discovery. Possible sanctions include ". . .(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or in part; . . .". Rule 37(b)(2)(A)(ii)-(v), Mont.R.Civ.P.

The Montana Supreme Court outlined a three-factor test for assessing the appropriateness of discovery sanctions in *Smith v. Butte-Silver Bow County* (1996), 276 Mont. 329, 339-40, 916 P.2d 91, 97. The three-factor test (1) relates to the extent and nature of the discovery abuse; (2) relates to the extent of the prejudice to the

opposing party which resulted from the discovery abuse; and (3) is consistent with the consequences expressly warned of by the trial court, if such a warning was actually issued. The court further noted, "We also clarified that the third prong of the "harshness" test does not require a trial court to issue a warning before imposing a discovery sanction. *Id*. quoting *McKenzie v. Scheeler* (1997), 285 Mont. 500, 516, 949 P.2d 1168, 1178. The court went on to further clarify that ". . . the third prong of the *Smith* test requires only that the sanctions imposed be consistent with those of which the trial court expressly warns a party. Thus, this factor only applies if the trial court issues an express warning." *Id.*

The court also addressed the propriety of discovery in those cases prosecuted or defended by a pro se litigant. In *First Bank (N.A.)-Billings v. Heidema* (1986), 219 Mont. 373, 375-376, 711 P.2d 1384, 1386 (citations omitted), the court held:

> This Court's attitude towards dilatory discovery tactics is unequivocal:
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> In adopting a position that dilatory discovery actions are no longer to be dealt with leniently, we are in accord with the recent trend of cases intent upon punishing transgressors rather than patiently trying to encourage their cooperation . . . When litigants use willful delay, evasive responses, and disregard of court direction as part and parcel of their trial strategy, they must suffer the consequences.
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> The emerging standards for willfulness in the Ninth Circuit should dispel any reluctance on the part of trial judges to apply sanctions.
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> Where it is determined that counsel or a party has acted willfully or in bad faith in failing to comply with rules of discovery or with court orders enforcing the rules or in flagrant disregard of those rules or order, it is within the discretion of the trial court to dismiss the action or to render judgment by default against the party responsible for the default . . . Litigants who are willful in halting the discovery process act in opposition to the authority of the court and cause impermissible prejudice to their opponents. It is even more important to note, in this era of crowded dockets, that they also deprive other litigants of an opportunity to use the courts as a serious dispute-settlement mechanism.
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> While we are predisposed to give pro se litigants considerable latitude in proceedings, that latitude cannot be so wide as to prejudice the other

> party, as happened in the case at bar. To do so makes a mockery of the judicial system and denies other litigants access to the judicial process. It is reasonable to expect all litigants, including those acting pro se, to adhere to the procedural rules. But flexibility cannot give way to abuse. We stand firm in our expectation that the lower courts hold all parties litigant to procedural standards which do not result in prejudice to either party. The judgment ordered by the lower court in this case was well within the boundaries of its discretion and it is affirmed.

Pareja has served as Crabb's authorized agent throughout this proceeding. Pareja has acted on Crabb's behalf when interacting with OAH staff; responding to Covered Wagon's discovery requests; and, ultimately, obstructing the proceeding.

On November 13, 2018, the hearing officer issued an Order Resetting Contested Case Hearing Date and Prehearing Schedule to accommodate discovery issues that had arisen between the parties that were partially attributable to Pareja having yelled at Covered Wagon's counsel when he attempted to meet and confer regarding Covered Wagons' first set of discovery requests. The hearing officer subsequently granted Covered Wagon's motion to compel Crabb's discovery responses on December 7, 2018 with a response deadline of December 31, 2018. Covered Wagon then filed a Motion to Dismiss with Prejudice and Motion for Summary Judgment due to Crabb's continued refusal to adequately respond to Covered Wagon's discovery requests. The hearing officer denied the motion with the belief that additional time would allow Crabb an opportunity to understand the importance of discovery and to comply with the hearing officer's order compelling her discovery responses. On February 14, 2019, the hearing officer conducted a telephone conference with Pareja, Crabb and Jordan Helvie, Covered Wagon's attorney of record, and attempted again to explain the importance of discovery and the need for the parties to complete discovery in a full and complete manner. The hearing officer reset the hearing dates and prehearing deadlines to allow for additional time for discovery.

Instead of complying with the hearing officer's orders and oral directives to complete discovery, Pareja, on behalf of Crabb, chose to continue on the path of obstructive and offensive behavior. Pareja's conduct escalated to the point of OAH staff receiving the following email:

> "You all can go fuck yourselves, I am done with this bullshit, harassment, and complete and total ignorance of the actual issue."

See email chain beginning with email from Pareja to Page, cc: Helvie, Jessica Crabb v. Covered Wagon Mobile Home Park, (03/11/19, 11:39:25 AM) and ending with email from Pareja to Page, Helvie, 03/12/19, 12:55 PM).

Pareja has engaged in a pattern of conduct while serving as Crabb's authorized agent showing a willful and flagrant disregard of the orders of the hearing officer by refusing to properly respond to Covered Wagon's discovery requests. The hearing officer has attempted to explain to Pareja the importance of full and complete discovery and that neither party has the right to dictate to the other what is relevant or what is discoverable. When given the opportunity to correct his behavior, Pareja has chosen to continue on the course of obstruction. Given Crabb's responses to the notice of the hearing officer's intent to dismiss, which were clearly prepared by Pareja, the hearing officer is left with the inescapable conclusion that Pareja will continue to obstruct the discovery process regardless of how much time he is given to comply. Pareja's conduct serves only to prejudice the rights of Covered Wagon, which cannot and will not be allowed. The proper sanction in this case under Rule 37(b)(2)(A)(v), Mont.R.Civ.P, is dismissal of Crabb's claim.

III. ORDER

IT IS THEREFORE ORDERED that the Charge of Discrimination by Jessica Crabb is hereby DISMISSED WITH PREJUDICE[2].

To the extent there are any extant protective orders and/or sealed documents and evidence, the hearing officer maintains all such matters as protected in accord with the orders until such time as a tribunal with jurisdiction shall vacate or modify the orders.

DATED this 26th day of April, 2019.

/s/ CAROLINE A. HOLIEN
Caroline A. Holien, Hearing Officer
Office of Administrative Hearings

[2]The Montana Department of Labor & Industry's Human Rights Bureau has not filed and served a motion either to intervene or to redesignate the complaint as a Commissioner complaint.

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Jessica Crawford, Charging Party; and Covered Wagon Mobile Home Park, Respondent, and its attorney, Jordan Helvie:

The decision of the Hearing Officer dismissing this case, which is an administrative decision appealable to the Human Rights Commission, issued April 26, 2019, in this contested case. **Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c) and (4).**

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, Mont. Code Ann. § 49-2-505 (4), WITH ONE DIGITAL COPY, with:

Human Rights Commission
c/o Annah Howard
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND ONE DIGITAL COPY OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505(4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

THERE IS NO TRANSCRIPT OF HEARING, BECAUSE THE CASE WAS DISMISSED PRIOR TO HEARING. Direct any questions about the appeal process to Annah Howard, (406) 444-4356, Human Rights Bureau, Department of Labor and Industry.