

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-558

JOSE CORTEZ-QUINTANILLA AND MISSAEL SERRANO-RAMOS

versus

DANILO PERDOMO-VALLE AND SAFEWAY INSURANCE COMPANY OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 824-443, DIVISION "D"
HONORABLE JACQUELINE F. MALONEY, JUDGE PRESIDING


April 29, 2026

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and Timothy S. Marcel

VACATED AND REMANDED

SJW
SMC
TSM

TRUE COPY

JALISA WALKER
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLANT,
JOSE CORTEZ-QUINTANILLA AND MISSAEL SERRANO-RAMOS

Ivan A. Orihuela

COUNSEL FOR DEFENDANT/APPELLEE,
SAFEWAY INSURANCE COMPANY OF LOUISIANA

Michelle DeLoach Brooks

Davis R. Peltier

Emily Barbera Wood

WINDHORST, J.

Plaintiffs, Jose Cortez-Quintanilla and Missael Serrano-Ramos, appeal the trial court's September 9, 2025 judgment granting the motion to dismiss for failure to comply with the court's judgment in favor of Safeway Insurance Company of Louisiana dismissing defendants, Safeway and Danilo Perdomo-Valle, from this lawsuit. For the reasons discussed herein, we vacate the trial court's judgment dismissing Safeway and Mr. Perdomo from this case and remand for further proceedings.

BACKGROUND

In January 2022, plaintiffs filed suit against Safeway and Mr. Perdomo in the 24th Judicial District Court for Jefferson Parish for personal injuries and property damages caused by a January 2021 automobile accident with Mr. Perdomo.

According to Safeway, it noticed plaintiffs' depositions on three occasions but plaintiffs failed to appear. As a result, Safeway filed a motion to compel the depositions in May 2025, and a hearing was scheduled for June 2025. Before the hearing, the parties agreed to enter into a consent judgment, whereby Safeway allowed plaintiffs an additional month to provide available dates for their depositions. On June 16, 2025, the trial court entered judgment, granting the motion to compel and ordering plaintiffs to submit their availability for depositions by July 16, 2025.

Because plaintiffs did not provide available dates for depositions by July 16, 2025, on July 17, 2025 Safeway filed a motion to dismiss for failure to comply with the judgment. In its motion, Safeway asserted that it had noticed plaintiffs' depositions in February and October 2024 and May 2025, but plaintiffs did not appear. Safeway also asserted that, despite the trial court's June 16, 2025 judgment ordering them to provide availability for depositions, plaintiffs had not done so. Safeway therefore sought dismissal of plaintiffs' lawsuit under La. C.C.P. art. 1471. Safeway attached the June 16, 2025 judgment to its motion.

Plaintiffs opposed the motion, asserting Safeway failed to provide evidence that any of the criteria discussed in the caselaw are present here to justify dismissal, including that plaintiffs (the parties themselves) were served with proper notice of the prior scheduled depositions, were at fault in failing to appear, or willfully refused to participate in discovery. Plaintiffs also argued they had not refused to participate in discovery as evidenced by their July 2023 responses to defendants' written discovery requests. Plaintiffs further contended that Safeway was not prejudiced by the delay in taking their depositions because the case has not been set for trial and it still has time to depose plaintiffs and prepare a defense.

After a hearing, the court granted Safeway's motion to dismiss and dismissed both Safeway and Mr. Perdomo from the lawsuit. This appeal followed.

LAW and ANALYSIS

Safeway sought, and the trial court granted dismissal of plaintiffs' action based on La. C.C.P. art. 1471. That article provides as follows:

If a party fails to obey an order to provide or permit discovery, the court in which the action is pending may make such orders in regard to the failure as are just, including any of the following:

- (1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.
- (2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.
- (3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a default judgment against the disobedient party upon presentation of proof as required by Article 1702.

Louisiana courts have the discretion to impose greater sanctions for failure to comply with court ordered discovery than failure to comply with general discovery rules. Horton v. McCrary, 93-2315 (La. 4/11/94), 635 So.2d 199, 203; Barber v. Ichaso, 01-213 (La. App. 4 Cir. 2/27/02), 811 So.2d 1128, 1132. Refusal to comply with court ordered discovery is a serious matter. Id.

The trial court has much discretion in imposing sanctions for failure to comply with discovery orders, and its ruling should not be reversed absent an abuse of discretion. Bravo v. Borden, 07-380 (La. App. 5 Cir. 12/27/07), 975 So.2d 36, 39. Dismissal, however, is a draconian penalty, which should be applied only in extreme circumstances. Id.; Horton, 635 So.2d at 203. Dismissal is a sanction of last resort only to be imposed where a party has failed to comply with a court order of discovery and only after the litigant has had an opportunity to be heard. Bravo, 975 So.2d at 39. Dismissal and default are generally reserved for those cases in which the client, as well as the attorney, is at fault. Id.

In Horton, the Louisiana Supreme Court adopted from federal courts the following criteria in determining whether a trial court properly dismissed a party's pleading due to failure to comply with court-ordered discovery: (1) whether the violation was willful or resulted from inability to comply; (2) whether less drastic sanctions would be effective; (3) whether the violations prejudiced the opposing party's trial preparation; and (4) whether the client participated in the violation or simply misunderstood a court order or innocently hired a derelict attorney. Horton, 635 So.2d at 203 (La. 1994); Bravo, 975 So.2d at 40; Barber, 811 So.2d at 1132.

The record must show that the noncompliant party was clearly aware that his noncompliance would result in the sanction and show that the party himself, and not merely his attorney, was at fault in failing to comply with the discovery order. Id. at 1133, citing Magri v. Westinghouse Elec., Inc., 590 So.2d 830 (La. App. 4th Cir. 1991). The record must establish that the noncompliance was due to the "willfulness, bad faith, or fault" of the party himself as opposed to his counsel. Allen v. Smith, 390 So.2d 1300, 1302 (La. 1980). If the record does not contain evidence that the noncompliance was due to the party's fault, the court has abused the wide discretion afforded it by La. C.C.P. art. 1471. Barber, 811 So.2d at 1133; Brumfield v. Lallie Kemp Charity Hosp. 551 So.2d 741, 742 (La. App. 1st Cir.1989).

In the present case, the record indicates the above criteria have not been satisfied. The only exhibit attached to Safeway's motion was the trial court's June 16, 2025 judgment ordering plaintiffs to provide available dates for their depositions. There is no evidence plaintiffs' non-compliance with the judgment was due to any bad faith, willfulness or fault of plaintiffs. Plaintiffs' counsel merely states in his brief that he lost contact with plaintiffs and, as a result, was unable to determine plaintiffs' availability for deposition dates. There is nothing in the record to indicate whether plaintiffs were aware of the judgment and willfully ignored the judgment or acted in bad faith.

The record also does not indicate plaintiffs were aware their lawsuit would be dismissed due to non-compliance with the judgment. Barber, 811 So.2d at 1133. Further, Safeway has not shown it was prejudiced by plaintiffs' failure to comply. Trial has not been set, and discovery can continue after this appeal.

The parties argued regarding whether plaintiffs were properly served with their notices of depositions. La. C.C.P. art. 1235 provides that service is made on a person who is represented by another through personal or domiciliary service on that representative. La. C.C.P. art. 1313 also provides for service of pleadings filed subsequent to the original petition on counsel of record. Thus, as asserted by Safeway, service of plaintiffs' notice of depositions on plaintiffs' counsel would satisfy the legal notice requirement. None of the notices of depositions are before this court; thus, we cannot determine whether notice was sufficient. Nonetheless, proof of basic service of the deposition notices on counsel would not be sufficient to satisfy the evidentiary requirements for dismissal under La. C.C.P. art. 1471, such as bad faith, willfulness, or fault of the party and/or knowledge that dismissal would result from non-compliance. Further, none of the less harsh remedies available under La. C.C.P. art. 1471 have been tried, nor was there any showing or contention that they would have been insufficient.

Taking into account the lack of evidence regarding the relevant criteria for application of La. C.C.P. art. 1471, we find the trial court abused its discretion in granting Safeway's motion to dismiss. We therefore vacate the trial court's judgment dismissing Safeway and Mr. Perdomo from this lawsuit.

DECREE

For the above reasons, we vacate the trial court's September 9, 2025 judgment granting Safeway's motion to dismiss and dismissing Safeway and Mr. Perdomo from this lawsuit.

VACATED AND REMANDED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 29, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-CA-558

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE JACQUELINE F. MALONEY (DISTRICT JUDGE)

IVAN A. ORIHUELA (APPELLANT)

DAVIS R. PELTIER (APPELLEE)

MICHELLE DELOACH BROOKS
(APPELLEE)

MAILED

BLAKE A. MELANCON (APPELLEE)

EMILY BARBERA WOOD (APPELLEE)

LAURA CHARPENTIER (APPELLEE)

ATTORNEYS AT LAW

211 WEST FIFTH STREET

THIBODAUX, LA 70301