IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502018AP000095CAXXMB
L.T. No.: 502017CC003490XXXXNB

MARISA PARTON and
SHAWN PARTON,
Appellants,
v.

MARIO ARANA and
NALINA ARANA,
Appellees.
_____/

Opinion filed: MAY 13 2019

Appeal from the County Court in and for Palm Beach County,
Judge Peter Evans

For Appellant: Matthew Militzok, Esq.
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PER CURIAM.

Appellants Marisa Parton and Shawn Parton ("Tenants") appeal an Order dismissing their counterclaim against Appellees Mario Arana and Nalina Arana ("Landlords") with prejudice.

Landlords filed the underlying eviction action alleging that Tenants failed to timely tender several months of payments on the residential property they were renting. On appeal, Tenants argue that that the trial court erred by failing to immediately transfer the entire action to circuit court when Tenants filed an amended counterclaim, raising the amount in controversy to in excess of $15,000.00. Tenants also contend that the trial court erred by dismissing their amended counterclaim with prejudice for failing to appear at a case management conference after the order setting the conference specifically directed that they must attend. Only the claim on dismissing the counterclaim with prejudice for failure to attend a case management conference will be addressed, as we find the jurisdictional amount in controversy claim to be without merit.

Tenants contend that the trial court should not have dismissed their counterclaim because their failure to appear at the case management conference was not willful or flagrant, but rather a result of confusion about the procedure of the conference and the surrounding circumstances.

Under Florida Rule of Civil Procedure 1.200(c), the court may dismiss the action where a party fails to attend a noticed case management conference. Rule 1.200(c) provides, in relevant part:

> Reasonable notice must be given for a case management conference, and 20 days' notice must be given for a pretrial conference. On failure of a party to attend a conference, the court may dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action. Any documents that the court requires for any conference must be specified in the order. Orders setting pretrial conferences must be uniform throughout the territorial jurisdiction of the court.

Fla. R. Civ. P. 1.200(c).

Where the court seeks to dismiss the action pursuant to rule 1.200(c), it must first find that the party's conduct was "willful and contumacious" as dismissal is the harshest of all sanctions. *Dedmon v. Kelly*, 60 So. 3d 585, 587 (Fla. 4th DCA 2011); *Zeigler v. Huston*, 626 So. 2d 1046, 1047 (Fla. 4th DCA 1993). The trial court must make such finding in the subject order or failure

to do so will constitute reversible error. *See Townsend v. Feinberg,* 659 So.2d 1218, 1219 (Fla. 4th DCA 1995). "[N]o 'magic words' are required but rather only a finding that the conduct upon which the order is based was equivalent to willfulness or deliberate disregard." *Commonwealth Fed. Sav. & Loan Ass'n v. Tubero,* 569 So.2d 1271, 1273 (Fla. 1990). The record must support such findings by the trial court. *Giemme USA, LLC v. La Sala Group, Inc.*, 92 So. 3d 920, 922 (Fla. 4th DCA 2012).

In *Lahti v. Porn*, the Fourth District Court of Appeal addressed a similar set of facts. *Lahti v. Porn*, 624 So. 2d 765, 766 (Fla. 4th DCA 1993). In that case, the Fourth District Court of Appeal addressed whether a trial court's dismissal of a complaint with prejudice for failure of plaintiff's counsel to attend the docket call and to fully comply with the pretrial order constituted an abuse of discretion. *Id.* The Fourth District Court of Appeal ultimately held that the dismissal with prejudice was an abuse of discretion as it was "a drastic remedy which should be used only in extreme situations and upon a showing of deliberate and willful disregard for the trial court's order." *Id.* Despite the fact that the trial court's order setting the case for jury trial specified, "Attendance at calendar call is mandatory. Failure to attend may result in the dismissal of this action, the entry of a default or other appropriate sanctions," the Fourth District Court of Appeal still found that dismissal with prejudice was too severe a sanction because the record reflected that counsel did provide the trial court with an explanation for his failure to appear at the scheduling conference. *Id.*

Like the trial court's order in *Lahti*, the Order here provided in bold, italicized letters that "***ALL PARTIES*** MUST BE PRESENT WITH COUNSEL. FAILURE OF EITHER THE PARTIES OR COUNSEL TO APPEAR MAY RESULT IN THE ENTRY OF DEFAULT, DISMISSAL OR ADDITIONAL SANCTION." Moreover, just as counsel provided the trial court

with a reason for its absence at the calendar call in *Lahti*, counsel for Tenants, here, attempted to provide the Court with an explanation as to Tenants' absence at the scheduled case management conference. However, distinguishable from *Lahti*, the trial court here made express findings in its Order that Tenants' actions "demonstrate willful, deliberate, and contumacious behavior."

Based on the express findings of the trial court, and evidence of willful behavior on the part of the Tenants, we find that the trial court did not abuse its discretion when it dismissed the Amended Counterclaim. However, the trial court did abuse its discretion by dismissing the Amended Counterclaim *with prejudice.* Here, the level of inappropriate conduct does not reach the "extreme" level of behavior required by the caselaw for dismissal with prejudice. *Lahti*, 624 So. 2d 766. Stated differently, the sanction of dismissal with prejudice is not "commensurate with the offense." *Drakeford*, 694 So. 2d at 824.

Accordingly, we **REVERSE** the trial court's dismissal of Tenants' Amended Counterclaim with prejudice and **REMAND** to the trial court to enter an order dismissing the Amended Counterclaim without prejudice.

COATES, SASSER, and KERNER, JJ., concur.

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Opinion/Decision filed: MAY 13 2019

Appeal from Palm Beach County Court
Judge Peter Evans

Date of Appeal: August 13, 2018

DATE OF PANEL: APRIL 16, 2019

PANEL JUDGES: COATES, SASSER, KERNER

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	DISSENTING: With/Without Opinion	CONCURRING SPECIALLY: With/Without Opinion
5/2/19 _____ DATE: J.	_____ J.	_____ J.
5/7/19 _____ DATE: J.	_____ J.	_____ J.
5/8/19 SRK _____ DATE: J.	_____ J.	_____ J.