

**IN THE IOWA DISTRICT COURT IN AND FOR HARDIN COUNTY**

<b>KASEY HILPIPRE,</b>	)	
<b>RYLEIGH HILPIPRE,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Case No. LACV101260</b>
<b>vs.</b>	)	
	)	<b>ORDER</b>
<b>DEAN HILPIPRE,</b>	)	
	)	
<b>Defendant.</b>	)	

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This matter came before the Court for hearing on April 1, 2019. The hearing was conducted telephonically. Devin Kelly appeared with the plaintiffs. Maurice Spencer appeared with the defendant.

Plaintiffs filed their petition on March 13, 2018 for compensatory and punitive damages alleging sexual assault, false imprisonment, assault and battery, emotional distress, and loss of consortium as a result of the defendant's acts. These acts were related to a criminal proceeding in which the defendant entered a plea of guilty. On May 24, the Court granted a default judgment on liability and ordered that the case coordinator to schedule a half-day hearing on damages.

The Court denied the defendant's Motion to Set Aside the Default the Judgment on August 6. On August 13, the parties entered into a trial-scheduling and discovery plan.

On January 21, 2019, the plaintiffs filed a Motion to Compel based on the defendant's failure to file his Initial Disclosures or any Answers or Responses to plaintiffs' first set of discovery. This discovery was requested on November 15, 2018, and was due on December 15.

On December 18, Attorney Kelly wrote to Attorney Spencer inquiring into the status of the Answers and Responses. Spencer did not respond.

On January 10, 2019, Kelly called Spencer. There was a brief conversation before the line was disconnected. Kelly attempted to reconnect, but was forwarded to Spencer's voice mail. Spencer did not return the call. That same day, Kelly again wrote to Spencer inquiring into the status of the discovery. Spencer did not respond to this inquiry and did not answer the discovery.

Plaintiffs sought sanctions of \$2,000.00 based on the defendant's failure to comply with discovery required by I.R.Civ.P. 1.500, 1.509(1), and 1.510(2). On January 22, the Court granted the plaintiffs' Motion to Compel in part, by requiring the defendant to provide responses by February 8. The imposition of sanctions was deferred.

The defendant did not respond to the discovery requests or to the Court.

On February 25, the plaintiffs moved for entry of summary judgment and renewed their request for sanctions for failure to respond to discovery in the amount of \$2,500.00. The Motion for Summary Judgment included a supporting brief and statement of material facts in compliance with I.R.Civ.P. 1.981(1).

On February 27, the Court set the hearing on the Motions for Summary Judgment and sanctions for April 1.

I.R.Civ.P. 1.981(3) provides

1.981(3) *Motion and proceedings thereon.* The motion shall be filed not less than 60 days prior to the date the case is set for trial, unless otherwise ordered by the Court. Any party resisting the motion shall file a resistance within 15 days, unless otherwise ordered by the Court, from the time when a copy of the motion has been served. The resistance shall include a statement of disputed facts, if any, and a memorandum of authorities supporting the resistance. Notwithstanding the provisions of Rules 1.431 and 1.435, the time fixed for hearing or non oral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the Court. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. If summary judgment is rendered on the entire case, Rule 1.904(2) shall apply.

The defendant failed to respond to the Motion for Summary Judgment until the morning of the hearing. The responses were untimely and were not in compliance with the Rules of Procedure.

The defendant's "Response to Plaintiffs' Statement of Undisputed Material Fact" consisted simply of the following:

1. Admit
2. Admit
3. Admit
4. Admit
5. Admit
6. Admit
7. We, the Defense, did not refuse. (see Defendant's Response to Plaintiffs' Motion for Summary Judgment and Renewed Motion for Sanctions).
8. Admit
9. Admit
10. Deny. Plaintiffs' Counsel heard from Defendant's Counsel by e mail on Tuesday, March 19, 2019.

The response to the Motion for Summary Judgment was therefore untimely. It was not a resistance within the contemplation of I.R.Civ.P. 1.981(3) and there was no memorandum of authorities as required.

On the morning of the hearing, Spencer filed a two-page document entitled "Defendant's Answers to Plaintiffs' Interrogatories Nos. 1-14 Directed to Defendant". These responses were brief and in violation of I.R.Civ.P. 1.509(1)(d). They were not signed by the defendant as required by I.R.Civ.P. 1.509(1)(d). The defendant did not respond to plaintiffs' request for production. Also on the morning of the hearing, Spencer filed a document which denied the single request for admission that the damages in the case were \$10 million. Spencer signed this

response.

Thirty-eight minutes prior to the hearing, Spencer filed a “Motion for Extension to Answer Plaintiffs’ Request for Admissions”. The Motion stated:

1. The Respondent has not timely responded to a request for admissions due to his Counsel having dealt with a family medical emergency.
2. Counsel has filed the answers to that request.

A request for admission not denied within 30 days of submission is deemed admitted. I.R.Civ.P. 1.510(2). The item admitted is “conclusively established unless the Court on motion permits withdrawal or amendment of the admission.” I.R.Civ.P. 1.511.

The only reason given for the defendant’s complete disregard for the requests for discovery, production, and admission was a “family medical emergency” experienced by defense counsel. No specificity was given except that it involved counsel’s spouse.

At oral argument, Plaintiffs’ counsel expressed sympathy for Spencer’s predicament, but responded that Spencer did not call, write or e mail in response to their requests for discovery. They expressed a willingness to extend the deadlines, but Spencer did not respond. In fact, the first disclosure of his family medical emergency was in the filing on the morning of the hearing.

The Court is also sympathetic to Spencer. However, this case is set for trial in approximately one month. It involves a large amount of damages. The plaintiff is entitled to discovery. Spencer’s actions have nearly destroyed plaintiffs’ right to conduct this and subsequent discovery.

In addition, Spencer has failed to comply with I.R.Civ.P. 1.981(3) to properly and timely resist the Motion for Summary Judgment. This is not an academic exercise. The procedure is how the Court is presented with the issues and defenses in a manner that will enable the Court to

properly and timely adjudicate the motions.

Again, time is a factor. The Motion for Summary Judgment must be filed not less than 60 days prior to trial and the Resistance filed within 15 days to give the Court sufficient time to research and rule.

This discovery and initial disclosures were due months ago. Due to the vague description of Spencer's medical emergency, Spencer has failed to establish why he could not answer the discovery or communicate with counsel. He did not resist the Motion to Compel. He did not comply with it. If Spencer had abandoned his law practice temporarily, then he should have withdrawn from the case. After all, the trial date was scheduled after giving an opportunity for Spencer to participate in a trial-scheduling conference.

The present lack of diligence must also be considered in the context of the grant of the default judgment. Spencer filed an appearance on May 23, 2018, and after the defendant had moved for the entry of a default. He did not file an answer for nine days which was after the judgment of default was entered.

In summary, the defendant and counsel have flaunted the deadlines in this case. The plaintiffs are entitled to judgment.

### **ORDER**

1. The Court finds that the defendant's answer to the plaintiffs' request for admission should be stricken as untimely.
2. The Court finds that the plaintiffs' request for admission number one which reads "The damages in this case owed by Defendant to Plaintiff, individually and on behalf of R. H. are valued at \$10 million (\$10,000,000.00)" stands admitted.
3. The affidavit and other exhibits which have been filed in conjunction with the

Motion for Summary Judgment provide independent proof that R. H. has suffered damages as a result of the defendant's acts.

4. Judgment is entered against the defendant in the amount of \$10 million.

5. The defendant has grossly violated the Rules of Procedure and of this Court in failing to answer plaintiffs' requests for discovery. Accordingly, the Court will assess sanctions against the defendant in the amount of \$2,500.00.

6. The Court has insufficient information to assess sanctions against Maurice Spencer as counsel for the defendant.

7. The costs of this action are assessed against the defendant.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**      **Case Title**  
LACV101260      KASEY HILPIPRE, ET AL. V. DEAN HILPIPRE

So Ordered

A handwritten signature in black ink, appearing to read 'Kurt J. Stoebe', written over a horizontal line.

**Kurt J. Stoebe, District Court Judge,  
Second Judicial District of Iowa**