

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**APPLEGATE, INC., a Nebraska corporation,**

Plaintiff,

vs.

**LARRY PRIBIL, whose true name is LAWRENCE PRIBIL,**

Defendant.

Case No. CI98-10

**ORDER ON MOTION FOR SANCTIONS**

**DATE OF HEARING:** February 25, 2000.

**DATE OF DECISION:** February 28, 2000.

**APPEARANCES:**

For plaintiff: Rodney W. Smith.  
For defendant: George H. Moyer, Jr.

**SUBJECT OF ORDER:** Defendant's motion for sanctions.

**FINDINGS:** The court finds and concludes that:

1. The defendant served interrogatories on the plaintiff. The plaintiff failed to submit timely answers. After considerable forbearance, the defendant moved to compel answers. The motion was granted. The plaintiff failed to obey. After further forbearance, the defendant filed the motion for sanctions now under consideration. A hearing was held, at which the defendant offered uncontroverted evidence of the course of events. The plaintiff offered no evidence. Arguments of counsel were heard. Without taking any action on the motion for sanctions, the court took the matter under advisement.

2. Subsequent to the hearing, the plaintiff dismissed this action without prejudice.

3. A plaintiff may dismiss an action without prejudice, as a matter of right, at any time before final submission of the case. NEB. REV. STAT. § 25-601 (Reissue 1995); *State v. Jacob*, 256 Neb. 492, 591 N.W.2d 541 (1999).

a. When the plaintiff files a dismissal it ends the litigation, the case is no longer pending, and any order thereafter would constitute a nullity. *Werner v. Werner*, 186 Neb. 558, 184 N.W.2d 646 (1971).

b. It does not appear that § 25-601 requires court action or approval for a voluntary dismissal to become effective. *Miller v. Harris*, 195 Neb. 75, 236 N.W.2d 828 (1975); *Duffy v. Cody*, 129 Neb. 737, 262 N.W. 828 (1935).

c. A trial court has no jurisdiction to make orders thereafter and if made, they are a nullity, as are subsequent pleadings. *Cotton v. Fruge*, 8 Neb. App. 484, 596 N.W.2d 32 (1999) (dismissal by operation of law under § 25-217).

4. The motion for sanctions was rendered moot by the plaintiff's dismissal and must be denied as moot.

**ORDER:** The motion for sanctions is denied as moot.

Entered: February 28, 2000.

If checked, the Court Clerk shall:

Mail a copy of this order to all counsel of record and to any pro se parties.

Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Enter judgment on the judgment record.

Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Mail postcard/notice required by § 25-1301.01 within 3 days.

Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Note the decision on the trial docket as: [date of filing] Signed "Order on Motion for Sanctions" entered.

Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Mailed to:

BY THE COURT:

\_\_\_\_\_  
William B. Cassel  
District Judge