

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 0280

CHARLIE JONES, KEVIN JONES, AND WILLIE L. DIXON

VERSUS

JEROME BOOKER, GOAUTO INSURANCE COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY

JEW
GH
Mj

Judgment Rendered: OCT 31 2016

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On Appeal from
The 19th Judicial District Court,
Parish of East Baton Rouge, State of Louisiana
Trial Court No. C632395
The Honorable Donald R. Johnson, Judge Presiding

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

CRAIN, J.

Charles J. Fulda IV appeals a judgment imposing sanctions against him pursuant to Louisiana Code of Civil Procedure article 863. The sanctions were imposed in connection with a petition for damages filed by Fulda, as an employee of the Brouillette Law Firm, on behalf of three individuals who were allegedly involved in an automobile accident. The petition was filed against the adverse driver and his insurer, GoAuto Insurance Company, as well as an uninsured/underinsured motorist carrier. It is undisputed that all three plaintiffs settled their claims against the adverse driver and GoAuto several months before the petition was filed.

Fulda asserts that he was unaware of the settlements at the time the petition was filed. According to Fulda, the clients' file was originally assigned to another attorney who then left the Brouillette Law Firm. Only one day before the prescription deadline, Fulda learned that a petition needed to be filed, so he prepared the petition based upon the available information in the file. Fulda signed and filed the petition under the belief that he was preserving the clients' claims. At Fulda's request, service was withheld.

When the petition was served nearly three months later, an adjuster for GoAuto contacted Fulda the same day, informed him of the settlements, emailed Fulda a copy of the settlement documents, and requested that he voluntarily dismiss the claims against GoAuto and its insured. Despite having this information, as well as repeated efforts by GoAuto to secure a voluntary dismissal, Fulda failed to dismiss the claims, ultimately forcing GoAuto to file an exception of *res judicata*. GoAuto also filed a motion for sanctions. The day after those pleadings were fax-filed, Fulda voluntarily dismissed the claims against GoAuto and its insured. The dismissal was filed almost nine months after the petition, and

almost six months after Fulda's first receipt of the settlement documents. The trial court granted the motion for sanctions and ordered Fulda to pay \$500.00 in attorney fees and all costs incurred by GoAuto.

Article 863 authorizes a court to impose sanctions upon an attorney who signs pleadings without making an objectively reasonable inquiry into the facts and the law. *Bourgeois v. Bourgeois*, 13-0038 (La. App. 1 Cir. 9/13/13), 135 So. 3d 1, 5, *writ not considered*, 13-2439 (La. 1/27/14), 130 So. 3d 954. A trial court's determination regarding the imposition of sanctions is subject to the manifest error or clearly wrong standard of review. *Bourgeois*, 135 So. 3d at 5-6. Once the trial court finds a violation of Article 863 and imposes sanctions, the determination of the type or amount of the sanction is reviewed on appeal utilizing the abuse of discretion standard. *Bourgeois*, 135 So. 3d at 6.

Fulda argues that he was unaware of the settlements when he signed the petition, and, with only one day left in the prescriptive period, he did not have an opportunity to make any inquiry into the matter before filing the petition. Article 863 accounts for this situation in Subpart F by prohibiting sanctions for an original petition that "is filed within sixty days of an applicable prescriptive date and then voluntarily dismissed within ninety days after its filing." Therefore, Fulda had ninety days after filing the petition to make an objectively reasonable inquiry into the facts. The record reveals no such efforts by Fulda during that time period. Instead, after receiving documentation confirming the settlements, Fulda persisted in refusing to dismiss the claims for several more months.

Under these facts, we find no manifest error in the trial court's judgment imposing sanctions against Fulda. *See Thibodeaux v. Billiott*, 04-1308 (La. App. 5 Cir. 3/1/05), 900 So. 2d 110, 114 (attorney who filed a petition shortly before prescriptive deadline was properly sanctioned for failing to make a reasonable

inquiry and to dismiss the claims within ninety days of filing the petition). The judgment is affirmed, and all costs of this appeal are assessed to Charles J. Fulda IV. This memorandum opinion is issued in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1B.

AFFIRMED.