

[Cite as *Wolf & Akers, L.P.A. v. Mezu*, 2017-Ohio-5586.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105113

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**WOLF AND AKERS, L.P.A.**

PLAINTIFF-APPELLANT

vs.

**OKECHUKWU ANTHONY MEZU**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-15-844201

**BEFORE:** Keough, A.J., E.T. Gallagher, J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** June 29, 2017

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Plaintiff-appellant, Wolf and Akers, L.P.A., appeals the trial court's decision denying its motion for an award of attorney fees and expenses pursuant to R.C. 2323.51 and Civ.R. 11. For the reasons that follow, we affirm.

{¶2} In April 2015, appellant refiled a breach of contract action against defendant-appellee, Okechukwu Anthony Mezu ("Mezu"), alleging that Mezu owed appellant for unpaid legal fees in connection with a domestic relations proceeding. Mezu denied that he owed the legal fees, contending that the fees charged and amounts credited were inaccurate.

{¶3} The contentious nature of this litigation cannot be overstated. Immediately following the filing of the complaint, Mezu, pro se, moved to dismiss the action, contending that venue was improper, the complaint failed to state a claim, and the legal fees sought were disputed. After the trial court denied the motion, Mezu filed a reply brief to his motion to dismiss and subsequently a motion for reconsideration. In response, appellant opposed the motion for reconsideration and moved for sanctions pursuant to R.C. 2323.51 for Mezu's filing a reply brief without leave of court and after the motion to dismiss was denied.

{¶4} The trial court denied reconsideration and held appellant's motion for sanctions "in abeyance," although it noted that it "may be revisited at a later point." Mezu appealed the denial of reconsideration, but his appeal was dismissed for lack of a final appealable order.

{¶5} Thereafter, each party moved for summary judgment. While the summary judgment motions were pending, the parties participated in mediation, which was unsuccessful. Thereafter, Mezu moved for an order compelling discovery and for sanctions, claiming that appellant had failed to produce the documents requested in discovery. The trial court denied the motion. The trial court also denied each party's motion for summary judgment, finding there were genuine issues of material fact.

{¶6} On the eve of trial, Mezu filed a request for a jury trial, which was denied as untimely. When the trial was continued, Mezu again requested a jury trial. As a result of this filing, appellant sought sanctions against Mezu and requested that he be declared a vexatious litigator. Mezu also filed a motion for sanctions against appellant, and requested that appellant be declared a vexatious litigator. The trial court issued a journal entry denying Mezu's jury demand. The court also stated that it was holding both motions for sanctions "in abeyance," while admonishing both parties that they "are forewarned that the court shall take notice of any further frivolous filings in this case."

{¶7} Nevertheless, appellant subsequently issued a subpoena on Mezu requesting that he produce all information related to the "ghostwriter" Mezu was using to draft pleadings in the case. The trial court granted Mezu's motion to quash the subpoena.

{¶8} After a year of litigation, the matter proceeded to a bench trial, with testimony and evidence being taken on three, nonsequential days beginning on May 26 and ending on June 16. During the course of the trial, Mezu was repeatedly asked to adhere to the rules of procedure. Because Mezu felt that the trial court was biased based on comments

it made, Mezu sought to disqualify the trial judge following the second day of trial. The request to disqualify was subsequently denied. Ultimately, the trial court entered a directed verdict in favor of appellant and awarded damages in the amount of \$4,179.45 plus interest. After rendering the directed verdict, the trial court stated that it expected to review post-trial motions based on the contentious nature of the case, and advised Mezu to retain counsel to defend any request for sanctions.

{¶9} As anticipated, appellant moved for attorney fees and expenses pursuant to R.C. 2323.51 and Civ.R. 11, contending that Mezu’s actions, filings, and delays constituted frivolous conduct that adversely affected appellant. Attached to its motion was a copy of the fees and expenses incurred throughout the litigation, totaling over \$49,000.

{¶10} On the same day that appellant requested sanctions, Mezu filed with the court a “satisfaction of judgment” with a copy of a personal check attached in the judgment amount. Mezu subsequently opposed the appellant’s request for sanctions.

{¶11} The trial court issued a judgment entry denying appellant’s motion, finding that Mezu’s actions in this case “do not rise to the level of frivolous conduct that would merit an award of fees” and “sanctions are therefore unnecessary.” The court further concluded that because it refused to award sanctions, a hearing on the issue was not required.

{¶12} Appellant appeals, raising the following two assignments of error, which will be addressed together.

The trial court erred as a matter of law to the prejudice of appellant in failing to comply with R.C. 2323.51(B)(2) that requires the court to set a date for a hearing to be conducted in accordance with R.C. 2323.51(B)(2)(c) to determine whether appellee's conduct was frivolous, to determine whether appellant was adversely affected by such conduct and to determine if and the amount of any award to appellant.

The trial court abused its discretion to the prejudice of appellant in failing to conduct a hearing pursuant to R.C. 2323.51(B)(2)(a), to find appellee's conduct frivolous, to find that appellant was adversely affected and to determine an amount to be awarded to appellant.

{¶13} We initially note that although appellant moved for sanctions pursuant to R.C. 2323.51 and Civ.R. 11, it makes no argument on appeal that the trial court erred in denying its request for sanctions pursuant to Civ.R. 11, thus waiving this avenue for sanctions on appeal.

{¶14} R.C. 2323.51 provides that a party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with a civil action. "Frivolous conduct" is defined as any conduct that (1) "obviously serves merely to harass or maliciously injure another party to the civil action \* \* \* or is for another improper purpose, including but not limited to, causing unnecessary delay or needless increase in the cost of litigation"; (2) "is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law"; (3) "consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further

investigation or discovery”; or (4) “ consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.”

{¶15} R.C. 2323.51(B)(2) further provides that a hearing must be held if the court is to award sanctions. *Fitworks Holdings, L.L.C. v. Pitchford-El*, 8th Dist. Cuyahoga No. 88634, 2007-Ohio-2517, ¶ 15. However, if the court denies a motion for sanctions, a hearing is not required. *Id.*; *Bikkani v. Lee*, 8th Dist. Cuyahoga No. 89312, 2008-Ohio-3130, ¶ 31; *Pisani v. Pisani*, 101 Ohio App.3d 83, 654 N.E.2d 1355 (8th Dist.1995). As the Sixth District stated in *Huddy v. Toledo Oxygen & Equip. Co.*, 6th Dist. Lucas No. L-91-328, 1992 Ohio App. LEXIS 2390, \*5 (May 8, 1992), there may be circumstances in which “a hearing is not required, as where the court has sufficient knowledge of the circumstances for the denial of the requested relief and the hearing would be perfunctory, meaningless, or redundant.” *See also Pisani* at 88; *Brown* at ¶ 21.

{¶16} In cases where frivolous conduct is not apparent, it is within the trial court’s discretion to hold a hearing. Additionally, whether conduct evidences an intent to harass or maliciously injure generally is a factual determination best suited for the trial court, and deference must be given to the lower’s court’s judgment regarding those issues. *Pitcher v. Waldman*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, ¶ 21, citing *Schiff v. Dickson*, 8th Dist. Cuyahoga No. 99719, 2013-Ohio-5253, ¶ 10. Therefore, reversal of a decision denying sanctions pursuant to R.C. 2323.51 is only warranted where the decision is arbitrary, unconscionable, or unreasonable. *Schiff* at ¶ 22.

{¶17} In this case, the trial court noted that it had presided over a bench trial on the matter, and thus had sufficient knowledge of the facts and circumstances of the case to decide the motion without a hearing. The court stated that Mezu’s actions “did not rise to the level of frivolous conduct that would merit an award of fees.” The court reasoned that Mezu “raised the significant issue that he disputed some of [his attorney’s] charges,” and that [his attorney’s] contract with [him] failed to establish a clear conflict resolution protocol for disputing fees. Such guidelines would have been dispositive of this matter without the necessity for trial.” The court concluded that “[Mezu] reasonably defended himself against this lawsuit”; thus, “sanctions are unnecessary.”

{¶18} Looking at the entire record, we cannot say that the trial court abused its discretion in finding that Mezu’s actions did not rise to the level of frivolous conduct. While the trial transcript reveals that the trial court was frustrated with Mezu’s inability to present his case at trial, the court was in the best position to determine whether Mezu’s actions during trial were meant merely to harass or whether they were a result of inexperience.

{¶19} Additionally, because appellant was seeking fees and expenses incurred during the entire course of litigation, it was reasonable for the trial court to consider the conduct of the parties, not just of Mezu, during the entire case. As the court noted, the appellant’s lack of dispute resolution protocol in the fee agreement was the main reason for the prolonged litigation. In fact, reciprocal motions for summary judgment were denied because issues of material fact existed.



{¶20} Finally, it cannot be ignored that *both parties* were admonished and “forewarned that the court shall take notice of any further frivolous filings in this case” after each party requested sanctions and a vexatious-litigator declaration.

{¶21} Accordingly, because the court found no frivolous conduct to warrant an award of fees and sanctions, the trial court was not required to conduct a hearing. Additionally, the trial court had sufficient knowledge of the circumstances surrounding the case, and any additional hearing would have been redundant. We find no abuse of discretion by the trial court, and the assignments of error are overruled.

{¶22} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE \_\_\_\_\_

EILEEN T. GALLAGHER, J., and  
PATRICIA ANN BLACKMON, J., CONCUR