

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

BRIAN C. CURTIS, TRUSTEE OF THE CURTIS LIVING TRUST,	:	<b>OPINION</b>
	:	
Plaintiff-Appellant,	:	<b>CASE NO. 2005-L-023</b>
	:	
- VS -	:	
	:	
HARD KNOX ENERGY, INC., et al.,	:	
	:	
Defendants-Appellees.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 03 CV 001388.

Judgment: Affirmed.

*Kenneth L. Piper*, 185 Water Street, Geneva, OH 44041 (For Plaintiff-Appellee).

*Paul R. Malchesky*, Cannon, Stern, Aveni & Loiacono Co., L.P.A., 41 East Erie Street, Painesville, OH 44077 (For Defendants/Third Party Plaintiffs-Appellants).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, Brian C. Curtis, Trustee of the Curtis Living Trust, appeals the January 5, 2005 judgment entry of the Lake County Court of Common Pleas, denying his Motion for Attorney Fees and Expenses against defendants-appellees, Hard Knox Energy, Inc. and Hall & Horning Oilfield Services, Inc. For the following reasons, we affirm the decision of the court below.

{¶2} The parties have been involved in a dispute over a tract of land, located in Madison Township, Ohio, since Curtis acquired the property in 1998. The previous

owner of the land had leased the property for the purpose of extracting oil and gas from the property. A single, operative well was built on the property. Hard Knox and Hall & Horning claim they acquired their interests in the land through various assignments of the original lease. In 1998, Curtis filed an action in the Lake County Court of Common Pleas to quiet title against Hard Knox, Hall & Horning, and others. The trial court ruled that the assignments to Hard Knox and Hall & Horning were invalid. However, the court denied Curtis' request that the "Defendants be adjudged to have abandoned their [drilling] equipment and that such equipment has become a permanent fixture upon the real property of [Curtis]," on the grounds that the claim "lacks sufficient support."

{¶3} The trial court's decision was affirmed by this court in *Curtis v. Am. Energy Dev., Inc.*, 11th Dist. No. 2000-L-133, 2002-Ohio-3122.

{¶4} After the trial court's ruling that the lease assignments were invalid, Hall & Horning remained the registered owner of the well operating on Curtis' property with the Ohio Department of Natural Resources. Curtis submitted a Request for Change of Owner form to have ownership of the well transferred into Curtis' name. The Department of Natural Resources denied Curtis' request based on the language in the trial court's judgment entry denying Curtis' demand to have the well equipment adjudged abandoned. In a letter to Curtis dated March 27, 2003, the Department explained that "the court only upheld your [Curtis'] claim that you owned the minerals, not [the] well equipment. \*\*\* Hall and Horning \*\*\* indicated the likelihood of transferring this was unlikely and were going to file for a Permit to plug this well."

{¶5} On July 16, 2003, Curtis filed a declaratory judgment action against Hard Knox, Hall & Horning, and the Ohio Department of Natural Resources, seeking a declaration as to the ownership of the existing well and other equipment on the subject

property. Hard Knox and Hall & Horning filed counterclaims and third-party complaints against Curtis, challenging Curtis' title to the well equipment and alleging claims of slander of title, intentional interference with their business, and others. Hall & Horning alleged in its counterclaim that Curtis was operating for his profit the well of which Hall & Horning were the owners according to the permit registered with the Department of Natural Resources. Hard Knox alleged that it was sold an interest in the well equipment and facilities on Curtis' property and that Curtis was using this equipment for his own enrichment.

{¶6} The trial court rendered judgment in Curtis' favor on September 9, 2004, on summary judgment motions filed by the parties. The court ruled that Curtis is the owner of the well equipment and that Hard Knox and Hall & Horning do not have any interest in this equipment. As to Hard Knox, the court relied on a provision of the original lease stating that any equipment left on the property six month's after the termination of the lease would be deemed abandoned. Since the court had previously found that the original lease terminated on March 3, 1986, all equipment remaining on the property, including the operating well, was deemed abandoned as of September 3, 1986. As to Hall & Horning, the court relied on definition of "owner" contained in Chapter 1509 of the Revised Code, governing the department of natural resources, which defines an "owner" as "the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others." R.C. 1509.01(K). Since Hall & Horning did not have the right to do any of the things enumerated in R.C. 1509.01(K), the court found that Hall & Horning was not an owner of the well or the well equipment.

{¶7} The court then dismissed Hard Knox and Hall & Horning’s counterclaims and third-party complaints since no evidence was introduced in support of these claims.

{¶8} The trial court’s decision was affirmed by this court in *Curtis v. Hard Knox Energy, Inc.*, 11th Dist. No. 2004-L-165, 2005-Ohio-XXXX.

{¶9} On September 28, 2004, Curtis moved the trial court for attorney’s fees and expenses, asserting that Hard Knox and Hall & Horning’s asserted defenses and counterclaims constituted frivolous conduct under R.C. 2323.51.

{¶10} On January 5, 2005, the trial court denied Curtis’ motion as well as Curtis’ request for a hearing. The court found that Hard Knox and Hall & Horning “were justified in defending against the litigation as the Court’s prior decision did not unequivocally determine the owner of the well equipment.” The court also found the counterclaims did not constitute frivolous conduct as Hard Knox and Hall & Horning “believed that they were the rightful owners of the well equipment,” and, as such, “had the right to assert claims against [Curtis] for his alleged wrongful use of said equipment.”

{¶11} Curtis timely appeals and asserts the following assignments of error:

{¶12} “[1.] The trial court erred in denying Appellant[']s Motion for Attorney Fees and Expenses.

{¶13} “[2.] The trial court erred in denying Appellant[']s request for a hearing.”

{¶14} Under R.C. 2323.51, a party and/or their counsel may be sanctioned for “[t]he filing of a civil action, the assertion of a claim, defense, \*\*\* or the taking of any other action in connection with a civil action” if the conduct: “serves merely to harass or maliciously injure another party to the civil action or \*\*\* is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or

reversal of existing law, or \*\*\* consists of allegations or other factual contentions that have no evidentiary support or \*\*\* are not warranted by the evidence.” R.C. 2323.51(A)(1)(a), (A)(2)(a)(i)-(iv), and (B)(4). Such conduct constitutes “frivolous conduct.” R.C. 2323.51(A)(2). “[A]ny party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney’s fees, and other reasonable expenses incurred in connection with the civil action.” R.C. 2323.51(B)(1).

{¶15} The question of what constitutes frivolous conduct may be either a factual determination, e.g. whether a party engages in conduct to harass or maliciously injure another party, or a legal determination, e.g. whether a claim is warranted under existing law. “[A] trial court’s findings of fact are to be accorded substantial deference \*\*\* and are reviewed under an abuse of discretion standard” while legal questions are “subject to de novo review by an appellate court.” *State Farm Ins. Cos. v. Peda*, 11th Dist. No. 2004-L-082, 2005-Ohio-3405, at ¶28 (citations omitted). The ultimate decision whether to impose sanctions for frivolous conduct, however, remains wholly within the trial court’s discretion. *Edwards v. Livingstone*, 11th Dist. Nos. 2001-A-0082 and 2002-A-0060, 2003-Ohio-4099, at ¶17 (citation omitted).

{¶16} In Curtis’ first assignment of error, he claims that Hard Knox and Hall & Horning’s defenses and counterclaims were not warranted under existing law. Curtis maintains that the only basis for Hall & Horning’s defense was its status as “statutory permit holder” of the well. Hall & Horning did not claim a direct interest in the equipment and, under the court’s prior judgment entry, could not claim an interest in the mineral rights. Therefore, Curtis concludes, Hall & Horning had no legal basis for claiming any ownership interest in the well. Curtis likewise denies Hard Knox had any legal basis for its claim to own the equipment. Curtis argues that Hard Knox’s interest in the

equipment rested solely on lease assignments which the trial court had previously declared invalid.

{¶17} We agree with the trial court that Hard Knox and Hall & Horning were legally justified in maintaining their defenses to Curtis' declaratory judgment action. The trial court's prior judgment entry avoided making any determination regarding ownership of the well equipment. That judgment did not equate ownership of the well equipment with the original lease, assignments thereof, or with mineral or drilling rights on the property. The trial court did deny Curtis' claim to have the equipment declared permanent fixtures on the property and to declare the equipment abandoned.

{¶18} As registered permit holder of the well, Hall & Horning did exert some control over the well equipment, as evidenced by the Department of Natural Resources' refusal to transfer ownership to Curtis. The Department of Natural Resources also acknowledged that, although Hall & Horning did not possess a right to produce from the well, if it were to "appl[y] for a permit to plug this well," the Department would "have no option but to issue the plugging permit." Clearly, there existed some legal basis for Hall & Horning's defense to the action.

{¶19} The legal basis for Hard Knox's defense lies in the distinction between an interest in the property's oil and mineral rights and an interest in the equipment itself. The original lease presupposed this distinction by providing that the lessee could remove "all pipe, well casing, machinery, equipment or fixtures placed on or in the Premises." Likewise, the assignment of the lease to Hard Knox recognized a distinction between "rights and interest" under the lease and the "personal property" on the premises and "used in connection therewith." At the time the lease was assigned to Hard Knox, the assignor represented that it owned "100% of the production equipment

on said lease.” The fact that the trial court declared the Hard Knox’s assignment of “rights and interest” under the lease invalid did not necessarily extinguish Hard Knox’s right to the well equipment located on Curtis’ property.

{¶20} Finally, Curtis argues that Hard Knox and Hall & Horning’s counterclaims lacked legal justification because, as stated in the trial court’s judgment entry, there was “no evidence whatsoever to support [the] allegations.” Again, we disagree. Having found that Hard Knox and Hall & Horning had legal grounds for claiming interests in the well equipment, they were entitled to assert claims against Curtis for his alleged use of that equipment in derogation of their rights. As the trial court stated, “[i]f this Court had determined that Defendants were the rightful owners of the well equipment, the law certainly provided them a remedy for any wrongful use of the equipment by Plaintiff.”

{¶21} Curtis’ first assignment of error is without merit.

{¶22} Under the second assignment of error, Curtis maintains that the trial court erred by not holding a hearing on his motion for sanctions. A hearing on a motion for sanctions is only required under the statute when the trial court grants the motion. R.C. 2323.51(B)(2). In our district, the rule is stated that “the trial court is not required to hold a hearing upon every application for attorney fees which is disallowed.” *Peda*, 2005-Ohio-3405, at ¶31, quoting *Cregar v. Ohio Edison Co.* (Jan. 11, 1991), 11th Dist. No. 89-T-4316, 1991 Ohio App. LEXIS 78, at \*4.

{¶23} Curtis relies on the Tenth District Court of Appeals’ decision in *Ohio Dept. of Adm. Servs. v. Robert P. Madison Internatl., Inc.* (2000), 138 Ohio App.3d 388, for the proposition that “a trial court must schedule a hearing only on those motions which demonstrate arguable merit.” *Id.* at 399. Curtis then equates “arguable merit” with “prima facie case” and asserts that, because his motion made a prima facie case for

sanctions, the trial court erred by not holding a hearing. We decline to follow Curtis' reasoning.

{¶24} To hold that a trial court must conduct a hearing on every motion that makes a prima facie case for sanctions is not warranted by the statute or our own precedents. Such a rule would also compromise the trial court's discretion whether to award sanctions or not, which discretion the trial court may decline to exercise even where frivolous conduct is established. Finally, Curtis presents no compelling reason why a hearing was necessary to determine his motion for sanctions. Cf. *Huddy v. Toledo Oxygen & Equip. Co.* (May 8, 1992), 6th Dist. No. L-91-328, 1992 Ohio App. LEXIS 2390, at \*5 ("a hearing is not required 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").

{¶25} Curtis' second assignment of error is without merit.

{¶26} For the foregoing reasons, the January 5, 2005 judgment entry of the Lake County Court of Common Pleas denying Curtis' Motion for Attorney Fees and Expenses is affirmed.

DONALD R. FORD, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.