

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Shawn K. Brust, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 16AP-502
 : (C.P.C. No. 14CV-13459)
 Franklin County Sheriff's Office et al., : (ACCELERATED CALENDAR)
 :
 Defendants-Appellees. :

D E C I S I O N

Rendered on November 22, 2016

On brief: *Shawn K. Brust*, pro se.

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Jeffrey C. Rogers*.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Plaintiff-appellant, Shawn K. Brust, a pro se inmate, appeals the June 9, 2016 ruling of the Franklin County Court of Common Pleas which denied his motion for sanctions against an assistant prosecuting attorney. For the following reasons, we affirm the trial court's decision. Brust assigns a single error for our consideration:

The Trial Court Erred By Denying Appellant's Motion For Sanctions Without Either Holding A Hearing Or Making Factual Findings To Support Its Conclusion That Sanctions Were Not Appropriate Because Appellant's Motion For Sanctions Demonstrated Arguable Merit Alleging "Fivolous Conduct" Within The Meaning Of R.C. § 2323.51(A)(2)(a)(i),(ii),(iii) and (iv): Thus Rising To The Level Of "Willfulness" In Violation Of Ohio Civil Procedure, Civ.R. 11 Where Such Motion For Sanctions Did Not On Its Face Reveal The Lack Of Triable Issues.

{¶ 2} On August 22, 1997, Brust was arrested and criminally charged with murder. Brust was later tried and convicted of murder on October 1, 1998. As a result of Brust's initial arrest and impound of his vehicle, a series of cases were filed.

{¶ 3} On November 24, 1997, the sheriff's office filed a civil forfeiture action in case No. 97CV-10411 on Brust's vehicle only. There was never a forfeiture action filed on tools or any other possible contents of the vehicle. In 1999, this case was stayed and remained stayed until March 2014. However, Brust later claimed that the sheriff's office was responsible for tools taken out of his vehicle.

{¶ 4} The litigation between Brust and the Franklin County Sheriff's Office led to Brust's filing a motion for sanctions against an assistant prosecutor pursuant to Civ.R. 11 and R.C. 2323.51(A)(2). Brust asserts that the prosecutor intentionally misrepresented crucial facts to the trial court which caused the trial court to erroneously grant the Sheriff's motion to dismiss.

{¶ 5} In its June 9, 2016 decision and entry, the trial court found that "none of Defendants' or [the assistant prosecutor's] actions have been such that would warrant sanctions being issued against them. As such, Plaintiff's motion must be denied." It is from this decision that Brust appeals.

{¶ 6} The sheriff's office responds to Brust's assignment of error by making the following arguments: (1) An oral hearing is not required under either Civ.R. 11 or R.C. 2323.51; (2) The trial court did not abuse its discretion in denying Brust's motion for sanctions and cannot be overruled; and (3) Brust has not complied with R.C. 2969.25(A) and (C).

{¶ 7} This case was previously before this court and we reversed "[b]ecause we conclude[d] that the trial court erred by converting appellees' motion to dismiss into a motion for summary judgment without notifying the parties, and by holding that appellant failed to provide an affidavit describing his prior civil actions against government entities or employees." *Brust v. Franklin Cty. Sheriff's Office*, 10th Dist. No. 15AP-488, 2015-Ohio-5090, ¶ 1.

{¶ 8} A hearing is not mandated under Civ.R. 11 and is only required under R.C. 2323.51 if awards are to be made to any party. Since the court determined the

sheriff's office did not engage in conduct warranting sanctions, no hearing was required by statute.

{¶ 9} A decision to impose sanctions, pursuant to Civ.R. 11, lies within the discretion of the trial court and will not be reversed on appeal, absent an abuse of that discretion. *State ex rel. Fant v. Sykes*, 29 Ohio St.3d 65 (1987); *Zunshine v. Cott*, 10th Dist. No. 07AP-764, 2008-Ohio-2298, ¶ 12. Similarly, an appellate court will not reverse a trial court's award of sanctions under R.C. 2323.51 absent an abuse of discretion. *Crockett v. Crockett*, 10th Dist. No. 02AP-482, 2003-Ohio-585, ¶ 19. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

{¶ 10} An award of sanctions pursuant to Civ.R. 11 requires a finding by the trial court that the sheriff's office acted willfully, or with bad faith. *Bruggeman v. Bruggeman*, 2d Dist. No. 18084 (Nov. 22, 2000), citing *Ceol v. Zion Industries, Inc.*, 81 Ohio App.3d 286, 289 (9th Dist.1992) ("the prevailing party is not entitled to an award of attorney fees absent a demonstration of bad faith."). An analysis of a claim under R.C. 2323.51 "boils down to a determination of (1) whether an action taken by the party to be sanctioned constitutes 'frivolous conduct,' and (2) what amount, if any, of reasonable attorney fees necessitated by the frivolous conduct is to be awarded to the aggrieved party." *Judd v. Meszaros*, 10th Dist. No. 10AP-1189, 2011-Ohio-4983, ¶ 17. The trial court did not find that the sheriff's office acted willfully or with bad faith, or engaged in frivolous conduct.

{¶ 11} Based on a review of the record in this matter, Brust's sole assignment of error is overruled. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
