ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION IV

CA07-880

May 14, 2008

PATRICK POWERS
APPELLANT

v.

KATHRYN POWERS
APPELLEE

AN APPEAL FROM WASHINGTON COUNTY CIRCUIT COURT
[NO. CV06-1151]

HON. MARK LINDSAY, JUDGE

AFFIRMED

Approximately two years after appellant pleaded guilty to incest with his minor daughter, he sued appellee, his former wife, claiming that she devised a fraudulent scheme to falsely accuse him of sexual abuse and blackmail him into relinquishing his assets and child custody in a divorce action. The circuit court granted appellee summary judgment and imposed sanctions on appellant for almost $15,000 in costs and attorney fees. Appellant brings this pro se appeal from those rulings and from the trial court's decision not to recuse. We affirm.

Appellee filed for divorce in 2003 after learning that appellant had molested their minor daughter EP. On November 26, 2003, appellee's attorney, Stanley Ludwig, wrote to appellant's attorney regarding a property-settlement agreement and appellant's potential criminal liability for sexual abuse. The letter was written in a highly aggressive tone and stated

that, if appellant did not "sign off on the proffered property settlement agreement," Ludwig would ask the Washington County prosecutor "to prosecute [appellant] to the fullest extent of the law." The letter also stated, "[Appellant] needs to know that I am perfectly willing to hurt him as bad as I can if he forces the issue." Appellant did not agree to a property settlement. Instead, the divorce case was heard in a contested proceeding before Judge Mark Lindsay, who awarded appellee child custody, child support, and alimony and divided the parties' property unequally in her favor. The judge also found that appellant had molested EP.

After the divorce hearing, appellant pleaded guilty to two counts of incest. He stated in open court and in his plea questionnaire that his plea was voluntary. He acknowledged a factual basis for his plea and, at the sentencing hearing, testified that he molested his daughter for "personal reasons" and his "own satisfaction." He did not thereafter try to withdraw the guilty plea or seek Rule 37 relief.

Appellant did appeal the divorce decree, challenging the unequal division of property and calculation of his income for support purposes. He did not challenge the trial court's finding that he molested EP. We affirmed the decree and a subsequent order denying support modification, holding that appellant himself was responsible for the unequal property division and the mental, emotional, and employment problems he claimed to suffer from the divorce. *Powers v. Powers*, CA04-941 (Apr. 6, 2005) (not designated for publication); *Powers v. Powers*, CA04-641 (Feb. 2, 2005) (not designated for publication).

In 2006, appellant filed this pro se lawsuit against appellee for "blackmail/extortion and theft of property." He claimed in pertinent part that appellee plotted to have him prosecuted for incest based on false information; authorized her attorney to send the November 26, 2003

letter for the purpose of obtaining his assets and child custody; and failed to return personal property to him after the divorce. As a result, he said, he attempted suicide and pleaded guilty to criminal charges in a "weakened" state. Appellee moved for summary judgment and sanctions, both of which the trial court granted. This appeal followed.

Appellant argues first that "the Judiciary of Northwest Arkansas" has violated his civil rights. He sets forth various perceived wrongs and conspiracy theories and cites, among other constitutional provisions, the 10th Amendment (Rights Reserved to States or People) and the 13th Amendment (Slavery Prohibited). This point is not appropriately developed and is not accompanied by a coherent argument or citation to persuasive authority. We therefore do not consider it as a basis for reversal. *See McDermott v. Sharp*, 371 Ark. 462, ___ S.W.3d ___ (2007).

Next, appellant argues that Judge Mark Lindsay, who also heard the divorce case, should have recused in this case. A trial judge is presumed to be impartial, and it is the appellant's burden to demonstrate bias. *Nash v. Hendricks*, 369 Ark. 60, ___ S.W.3d ___ (2007). Appellant admitted in court that he had no proof of Judge Lindsay's partiality to either side. He further stated that he had not decided whether he was going to call the judge as a witness, which was a basis for his recusal motion. Appellant therefore did not meet his burden of overcoming the presumption of impartiality. Consequently, we find no abuse of discretion in the trial court's denial of the motion to recuse. *Nash*, *supra*.

As for appellant's complaints that the court admonished and interrupted him during the hearings in this case and ruled against him on various matters, an adverse ruling is not sufficient to demonstrate bias. *See Carnical v. McAfee*, 68 Ark. App. 313, 7 S.W.3d 350 (1999).

Further, we are satisfied after reviewing the record that the court's actions were based on the Rules of Civil Procedure and a desire for the efficient administration of justice rather than, as appellant claims, a motivation to punish him.

Appellant argues next that the trial court erred in granting summary judgment to appellee. Even viewing the evidence in the light most favorable to appellant, *see Templeton v. United Parcel Serv., Inc.*, 364 Ark. 90, 216 S.W.3d 563 (2005), we agree with the trial court that summary judgment was warranted. Appellant's blackmail and extortion allegations are based on his claim that appellee, by authorizing her attorney to write the November 2003 letter, tried to force him into an unfavorable property-settlement agreement and that, by falsely accusing him of sexual abuse, she caused his mental problems, his loss of child custody, his prosecution for incest, and his plea of guilty. It is clear as a matter of law that the attorney's letter did not induce appellant to enter into a property-settlement agreement. Appellant admitted as much in his deposition. Rather, the trial judge divided the couple's property and awarded child custody after an adversarial hearing. It is equally clear that appellant is in no position to claim that appellee falsely accused him of incest. The position he takes is directly contrary to his failure to challenge the divorce court's ruling that he molested EP and contradicts his assertion in criminal court that his guilty plea was voluntary and based on the truth that he engaged in sexual behavior with his daughter. The doctrine of judicial estoppel prevents a party's unfairly benefitting from such clearly inconsistent legal positions. *See Dupwe v. Wallace*, 355 Ark. 521, 140 S.W.3d 464 (2004) (listing the elements of judicial estoppel).

Regarding appellant's cause of action for "theft," which was based on his claim that appellee had not returned his property to him after the divorce, appellee stated in her affidavit

that she had none of appellant's possessions. Appellant responded with unfounded assertions of perjury rather than with proof of the specific items he sought. Mere conjecture is not sufficient to overcome a summary judgment. *Bradley v. Welch*, 94 Ark. App. 171, 228 S.W.3d 559 (2006).

Lastly, appellant argues that the trial court erred in imposing sanctions on him pursuant to Ark. R. Civ. P. 11. We uphold the trial court's ruling. Appellant's allegations against appellee were not well grounded in fact. In truth, they were contradicted by all known and established facts. The unequal property division in appellee's favor was not the result of appellee's criminal machinations but of the divorce court's findings after a contested hearing—a finding that we affirmed prior to appellant's filing this lawsuit. Furthermore, appellant's guilty plea was not engineered by appellee. Appellant admitted in open court that his plea was voluntary, and he testified quite clearly that there was no doubt as to his guilt. Rather than try to withdraw his plea or challenge the divorce court's finding that he molested his daughter, appellant waited almost two years, then filed this lawsuit seeking to hold appellee responsible for the results of his behavior. His attempt to rewrite history and cast himself as the victim of a fraudulent scheme has cost appellee time, money, and peace of mind long after the divorce and the upsetting incident that caused it should have been a closed chapter. We find no abuse of discretion in the award of sanctions. *See generally Williams v. Martin*, 335 Ark. 163, 980 S.W.2d 248 (1998).

Finally, appellant scatters throughout his brief numerous other allegations of wrongdoing by the trial court. These are either unsupported by convincing argument or authority or are patently unwarranted.[1]

Affirmed.

BIRD and VAUGHT, JJ., agree.

[1] Appellant's abstract and addendum are woefully deficient. Rather than remand for rebriefing, we relied on appellee's supplemental abstract and addendum. *See* Ark. Sup. Ct. R. 4-2(b)(1), which allows an appellee to supplement a deficient abstract or addendum and petition this court to recover costs and fees incurred in doing so.