

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA07-884

May 14, 2008

PATRICK POWERS

APPELLANT

v.

PATRICIA PAN ADAMS AND
ALTERNATIVE SOLUTIONS, PLLC
APPELLEES

APPEAL FROM WASHINGTON COUNTY
CIRCUIT COURT
[NO. CV06-2492]

HONORABLE MARK LINDSAY,
JUDGE

AFFIRMED

Appellant Patrick Powers appeals from the circuit court's orders denying his motion to recuse, dismissing his complaint, and imposing sanctions against him pursuant to Ark. R. Civ. P. 11. We affirm.

In November 2003, appellee Patricia Pan Adams, a psychotherapist, was counseling EP, the teenage daughter of appellant Patrick Powers. Adams suspected that Powers was sexually abusing EP and, during a session in which Powers was present, Adams confronted him with the accusation. The next day, she reported her suspicions to the child-abuse hotline. Thereafter, Powers's wife filed for divorce, and he threatened suicide on several occasions, lost his job, and had criminal charges filed against him.

At the February 2004 divorce hearing, the trial court found that Powers had sexually abused EP. Powers appealed the divorce decree's property division and support awards but did not challenge the court's finding that he had molested EP. We affirmed the decree and a post-decree order, noting that Powers's emotional state and inability to work were the consequence of his own voluntary criminal acts. *Powers v. Powers*, CA04-941 (Apr. 6, 2005) (not designated for publication); *Powers v. Powers*, CA04-641 (Feb. 2, 2005) (not designated for publication).

On July 21, 2004, Powers pled guilty to two counts of incest and acknowledged the voluntariness of his plea and a factual basis therefor. He testified at his sentencing hearing that there was no question of his guilt and that he had sexually molested his daughter for years.

On November 6, 2006, Powers filed a pro se complaint against Patricia Pan Adams and Alternative Solutions, PLLC, for negligence and fraud. He alleged that Adams engaged in "willful and wanton" conduct by talking with EP's high school counselor; breaching her professional ethics; "using practices outside the scope of her education, license, training, and professional guidelines"; tricking EP into cultivating allegations of incest; reporting her suspicion of abuse to the hotline; and misrepresenting various matters to the hotline. As a result, Powers claimed, he attempted suicide, lost his job, was declared mentally disabled, was sued for divorce, and was forced into a plea of guilty. The complaint stated no allegations of negligence against Alternative Solutions but implied that Adams was associated with that entity.

Adams and Alternative Solutions moved to dismiss Powers's complaint. The trial court granted the motion, ruling that Powers failed to raise any allegations against Alternative

Solutions; that Adams, as a licensed professional counselor and mandated reporter of suspected abuse of minors, was immune from suit and liability; that Powers was estopped from challenging his guilty plea or the facts established in his criminal and divorce cases; and that any damages Powers sustained were the result of “his own molestation of the victim, not the result of actions taken by Co-Defendant Pan Adams.” Adams and Alternative Solutions also asked the court to impose sanctions on Powers, pursuant to Ark. R. Civ. P. 11. The court did so, finding that the purpose of the lawsuit was “harassment of the Defendants.” Adams and Alternative Solutions were awarded \$23,054.25 in attorney fees and expenses, and the court stated the following:

To deter the Plaintiff from filing future frivolous lawsuits or other pleadings against the Defendants, the Plaintiff shall submit any such pleadings or lawsuits for review to a licensed attorney. Further, before such lawsuits or pleadings may be filed, they must be accompanied by a certificate signed by the licensed attorney stating that said attorney has reviewed the lawsuit or pleadings and that to the best of his or her knowledge, information, and belief, the attorney has found, after reasonable inquiry that it is well founded in fact and is warranted by existing law or contains a good faith argument for the extension, modification, or reversal of existing law and further that the lawsuit or pleading is not being pursued for any improper purpose.

Powers now appeals from the dismissal, the imposition of sanctions, and the trial court’s failure to recuse from the case.

I. Recusal

Powers argues first that the Judge Mark Lindsay should have recused from this case. Judge Lindsay heard Powers’s recusal motion in this case at the same time he heard Powers’s recusal motion in three related cases, which we hand down today: *Powers v. Powers*, CA07-880; *Powers v. Powers*, CA07-881; and *Powers v. Williams*, CA07-882. The judge denied all four motions for the same reasons in the same bench ruling. In this appeal, Powers’s argument

regarding recusal differs in no material respect from his argument in the three related cases. We therefore affirm the trial judge's decision not to recuse for the reasons stated in *Powers v. Powers*, CA07-880 and adopted in *Powers v. Powers*, CA07-881 and *Powers v. Williams*, CA07-882.

II. Motion to dismiss

Powers argues next that the trial court erred in dismissing his complaint. When the appellate court reviews an order granting a motion to dismiss, it treats the facts alleged in the complaint as true and views them in the light most favorable to the plaintiff. *Preston v. Univ. of Ark.*, 354 Ark. 666, 128 S.W.3d 430 (2003). In testing sufficiency of a complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and all pleadings are to be liberally construed. *Id.* Where the trial court considers matters outside the pleadings, the appellate court treats the order of dismissal as an order of summary judgment, see *Robbins v. Johnson*, 367 Ark. 506, 241 S.W.3d 747 (2006), and views the evidence in a light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Davis v. Parham*, 362 Ark. 352, 208 S.W.3d 162 (2005).

Powers alleged in his complaint that Adams was a licensed professional counselor who caused him injury when she reported to the child-abuse hotline that he sexually abused EP. Arkansas Code Annotated section 12-12-507(b) (Repl. 2003), provides that certain individuals, known as mandated reporters, must immediately notify the child-abuse hotline when they have reasonable cause to suspect that a child has been subjected to maltreatment. Mental health professionals, such as Adams, are among those designated in the statute as

mandated reporters. Ark. Code Ann. § 12-12-507(b)(15) (Repl. 2003). Arkansas Code Annotated section 12-12-517 (Repl. 2003), provides that a mandated reporter making such notification in good faith “shall be immune to suit and to liability.” It is clear that these statutes give Adams immunity from liability and suit for notifications made in good faith.

Powers argues that Adams’s notification was not made in good faith because she reported “unfounded allegations” to the hotline and testified untruthfully at the divorce hearing regarding his sexual abuse of EP. However, Powers’s insistence that Adams rendered untrue reports or false testimony is directly at odds with his position in other cases that the accusations of abuse were correct. Powers voluntarily pled guilty to incest in 2004, more than two years before this lawsuit was filed. During that time, he did not attempt to withdraw his guilty plea or seek relief pursuant to Ark. R. Crim. P. 37. Further, his testimony at the sentencing hearing was clear and unmistakable that he had molested EP on many occasions and that he did so for his “own satisfaction.” Moreover, Powers never challenged the divorce court’s finding that he had sexually abused EP. *See Powers v. Powers*, CA06-641 (Feb. 2, 2005) (not designated for publication). Nor did he challenge Adams’s credibility as a witness in the divorce case, *see id.*, despite doing so here.

The trial court ruled that Powers’s inconsistent legal positions warranted application of the doctrine of judicial estoppel, and we agree. The purpose behind judicial estoppel is protection and preservation of the judicial process. *Lewis v. Crelia*, 365 Ark. 330, 229 S.W.3d 19 (2006). It is designed to prevent parties from “playing fast and loose with the courts” and ensures a court’s right to rely on representations made in court. *Id.* at 333, 229 S.W.3d at 21. The elements of a prima facie case of judicial estoppel are 1) a party must assume a position

clearly inconsistent with a position taken in an earlier case, or with a position taken in the same case; 2) a party must assume the inconsistent position with the intent to manipulate the judicial process to gain an unfair advantage; 3) a party must have successfully maintained the position in an earlier proceeding such that the court relied upon the position taken; and 4) the integrity of the judicial process of at least one court must be impaired or injured by the inconsistent positions taken. *Dupwe v. Wallace*, 355 Ark. 521, 140 S.W.3d 464 (2004). Powers takes a position here that is in direct contrast to his position at the criminal proceeding that he was guilty of incest. The criminal court relied on Powers's unqualified representations of guilt in accepting his plea and sentencing him accordingly. We are convinced that, by now renouncing those representations and attempting to have others bear the blame for his behavior with EP, his guilty plea, and all of his ensuing problems, Powers is manipulating the judicial process for his own purposes. It goes without saying that the integrity of all courts involved in the process would be impaired if he were permitted to maintain and profit by these inconsistent positions. We therefore affirm the dismissal of his complaint.

III. Sanctions

Rule 11 of the Arkansas Rules of Civil Procedure provides that the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The rule further provides that, if a pleading, motion, or other paper is signed

in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. We review a trial court's determination of whether a violation of Rule 11 occurred and what the appropriate sanction should be under an abuse-of-discretion standard. *See Sanford v. Harris*, 367 Ark. 589, 242 S.W.3d 277 (2006).

The trial court found that Powers filed this lawsuit for an improper purpose, and we cannot say that the court abused its discretion. Long after Powers pled guilty to incest and let stand a divorce court's finding that he molested his daughter, he embroiled Adams in this baseless litigation, accusing her of making false reports of abuse, despite her clear entitlement to statutory immunity. Moreover, he sought to hold Adams liable for his guilty plea, which he acknowledged in criminal court was voluntary and based on the truth, and for his divorce and his mental, financial, and emotional problems, which this court expressly stated in 2005 were the result of his own criminal conduct. *See Powers v. Powers*, CA06-941 (Apr. 6, 2005) (not designated for publication); *Powers v. Powers*, CA06-641 (Feb. 2, 2005) (not designated for publication). It is apparent that Powers filed this lawsuit for an improper purpose and without it being well grounded in fact. The court's award of sanctions is therefore justified under Rule 11.

IV. Remaining issues

Throughout Powers's brief, he raises allegations of error and, in some cases, criminal conduct and conspiracy, that are either conclusory, undeveloped, not supported by convincing argument or authority, or plainly without merit. We do not consider these matters as grounds for reversal.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.