

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2009

ANTHONY CINQUEGRANA, III,
Appellant,

v.

JERROLD ROWLEY, CAROL ANN COLLIER, and JAMES COLLIER,
Appellees.

No. 4D08-2839

[June 24, 2009]

GROSS, C.J.

We reverse the circuit court's order dismissing appellant's complaint due to the litigation misconduct of attorney Jonathan Rotstein. In part, the dismissal was based on grounds not raised in appellee Colliers' motion to dismiss. In his motion, appellee Rowley asked not for dismissal of the complaint, but for the imposition of lesser sanctions. Also, counsel for Rowley had deposed appellant prior to the hearing on the motion to dismiss, so one discovery issue had been resolved prior to dismissal. On remand, the circuit court may consider the imposition of sanctions against attorney Rotstein. In any future hearing seeking dismissal for counsel's discovery violations, the circuit court should make express findings concerning the factors identified in *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993). See *Ham v. Dunmire*, 891 So. 2d 492, 500 (Fla. 2004).

Reversed and remanded.

WARNER and CIKLIN, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jeffrey A. Winikoff, Judge; L.T. Case No. 502006CA008435AN.

Bill McCabe, Longwood, and Jonathan I. Rotstein, Daytona Beach, for appellant.

Elizabeth K. Russo of Russo Appellate Firm, P.A., Miami, for appellees.

Not final until disposition of timely filed motion for rehearing.