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Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000746-MR

JOHN LACKEY

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE MICHAEL DEAN, SPECIAL JUDGE
ACTION NO. 16-CI-00598

SAMANTHA BURFORD AND THE
ATTORNEY GENERAL OF KENTUCKY

APPELLEES

AND

NO. 2017-CA-000878-MR

SAMANTHA BURFORD

CROSS-APPELLANT

v. CROSS-APPEAL FROM MADISON CIRCUIT COURT
HONORABLE MICHAEL DEAN, SPECIAL JUDGE
ACTION NO. 16-CI-00598

JOHN LACKEY

CROSS-APPELLEE

OPINION
AFFIRMING

** **

BEFORE: JOHNSON, SMALLWOOD AND THOMPSON, JUDGES.

SMALLWOOD, JUDGE: John Lackey appeals from an order of the Madison Circuit Court which held that Samantha Burford was the winning candidate for a seat on the Madison County School Board. Mr. Lackey argued in the court below that Ms. Burford was ineligible to run for the school board seat or, in the alternative, should be removed from her position due to violating certain Kentucky statutes. Ms. Burford argues that she rightfully won the election. Ms. Burford also cross-appeals arguing that the trial court abused its discretion when it denied Kentucky Rule of Civil Procedure (CR) 11 sanctions against Mr. Lackey. Finding no error, we affirm.

The underlying action began as an election contest brought by Mr. Lackey following his defeat by Ms. Burford in the November 8, 2016 general election for a position on the Madison County School Board. Mr. Lackey was the incumbent at the time of the election. During the campaign period, Ms. Burford was employed as an independent contractor by Rosanbalm Communications, Inc., a company owned by Randy Rosanbalm. Rosanbalm owned Madison County Sports Television (“MCSTV”), which televised various Madison County Schools sporting events. The sporting events were broadcast on local channel 9 and as part

of her job, Ms. Burford sold advertising to private businesses for broadcast on MCSTV. Ms. Burford would also appear on MCSTV as an announcer or interviewer of school personnel.

After Ms. Burford won the election, Mr. Lackey brought the underlying election contest. He alleged that due to her position with MCSTV, she was ineligible to run for a position for the school board because she had a pecuniary interest in school activities. He also alleged Ms. Burford violated Kentucky campaign finance rules.

This case was heard on the merits without a jury. The trial court ultimately determined that Ms. Burford won the school board seat fairly and violated no Kentucky law. The trial court also denied Ms. Burford's motion for CR 11 sanctions. This appeal and cross-appeal followed.

Mr. Lackey's arguments can be summarized into three separate claims. The first is that Ms. Burford's actions prior to the election made her ineligible to be a candidate pursuant to Kentucky Revised Statute (KRS) 160.180(2)(g). The second is that Ms. Burford's actions post-election make her ineligible to maintain her position on the school board pursuant to KRS 156.480(2). The third is that Ms. Burford violated Kentucky campaign finance rules and should be stripped of her board position. We will take each argument in turn.

First, we will analyze Ms. Burford's pre-election activities. KRS 160.180(2)(g) states that a person is ineligible to hold a position on a board of education "[w]ho, at the time of his election, is directly or indirectly interested in the sale to the board of books, stationery, or any other property, materials, supplies, equipment, or services for which school funds are expended[.]" Mr. Lackey claims that Ms. Burford's employment by MCSTV violates this rule because she sells ads for this television station, thereby being directly interested in the sale of services for Madison County Schools. He also claims that her appearances on MCSTV is free campaign advertising, which also amounts to a direct interest in school services.

The trial court dismissed this argument as being untimely pursuant to KRS 118.176(2). KRS 118.176(2) requires that any action contesting the eligibility, or bona fides, of a candidate for office be brought prior to the general election. Here, the trial court found that because Mr. Lackey's lawsuit was filed after the election, this claim should be dismissed. We agree with the trial court, but will still address this issue on the merits.

Under KRS 160.180(2)(g), a person is ineligible to be a member on a board of education if that person has an interest in services for which school funds are expended. Here, Mr. Rosanbalm and the superintendent of Madison County Schools testified that no school funds are expended for MCSTV and that no school

funds go to Rosanbalm Communications. Ms. Burford is in no way paid by Madison County Schools. In addition, the evidence presented to the trial court indicates that Ms. Burford's appearances on MCSTV were in no way related to her campaign. She is only an announcer and interviewer and does not discuss or mention her campaign. In short, Ms. Burford has no interest in any materials, services, or supplies for which funds from Madison County Schools are expended. Therefore, KRS 160.180(2)(g) is inapplicable to Ms. Burford.

Next, we will consider Ms. Burford's post-election activities. KRS 156.480(2) states:

No employee of any county or independent school district with decision-making authority over the financial position of the school district shall have any pecuniary interest, either directly or indirectly, in an amount exceeding twenty-five dollars (\$25) per year, either at the time of or after his appointment to office, in supplying any goods, services, property, merchandise, or services, except personal services that are in addition to those required by contract for employment, of any nature whatsoever for which school funds are expended. If any person specified in this subsection receives, directly or indirectly, any gift, reward, or promise of reward for his influence in recommending or procuring the use of any goods, services, property, or merchandise of any kind whatsoever for which school funds are expended, he shall upon conviction be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and his office or appointment shall without further action be vacant. (Emphasis added).

Mr. Lackey's claims regarding this statute are identical to those concerning KRS 160.180(2)(g), that Ms. Burford's employment by and appearances on MCSTV amount to a direct pecuniary interest in school services. This claim is without merit as discussed above. Madison County Schools expends no funds on MCSTV, Ms. Burford, Mr. Rosanbalm, or Rosanbalm Communications.

The final argument raised by Mr. Lackey concerns various alleged violations of Kentucky campaign finance rules. Specifically, Mr. Lackey claims that Ms. Burford received multiple impermissible corporate donations and should be removed from the school board. This argument stems from KRS 121.990(4), which states:

The nomination for, or election to, an office of any candidate or slate of candidates who knowingly violates any provision of KRS 121.150 to 121.220, or whose campaign treasurer knowingly violates any provision of KRS 121.150 to 121.220, with the knowledge of that candidate or slate of candidates, shall be void, and, upon a final judicial determination of guilt, the office shall be declared vacant and the officeholder shall forfeit all benefits which he would have been entitled to receive had he continued to serve, and the office or candidacy shall be filled as provided by law for the filling of a vacancy. An action to declare a vacancy under this subsection may be brought by the registry, the Attorney General, any candidate or slate of candidates for the office sought to be declared vacant, or any qualified voter.

KRS 121.150(18) states:

No candidate, slate of candidates, committee, except a political issues committee, or contributing organization, nor anyone on their behalf, shall knowingly accept a contribution from a corporation, directly or indirectly, except to the extent that the contribution is designated to a state executive committee's building fund account established under KRS 121.172.

KRS 121.015 defines contribution as:

(6) "Contribution" means any:

(a) Payment, distribution, loan, deposit, or gift of money or other thing of value, to a candidate, his or her agent, a slate of candidates, its authorized agent, a committee, or contributing organization. As used in this subsection, "loan" shall include a guarantee, endorsement, or other form of security where the risk of nonpayment rests with the surety, guarantor, or endorser, as well as with a committee, contributing organization, candidate, slate of candidates, or other primary obligor. No person shall become liable as surety, endorser, or guarantor for any sum in any one (1) election which, when combined with all other contributions the individual makes to a candidate, his or her agent, a slate of candidates, its agent, a committee, or a contributing organization, exceeds the contribution limits provided in KRS 121.150;

(b) Payment by any person other than the candidate, his or her authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or a contributing organization, of compensation for the personal services of another person which are rendered to a candidate, slate of candidates, committee, or contributing organization, or for inauguration activities;

(c) Goods, advertising, or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are furnished to a candidate, slate of candidates, committee, or contributing organization or

for inauguration activities without charge, or at a rate which is less than the rate normally charged for the goods or services; or

(d) Payment by any person other than a candidate, his or her authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or contributing organization for any goods or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are utilized by a candidate, slate of candidates, committee, or contributing organization, or for inauguration activities;

The first allegation of an illegal corporate campaign contribution is that Ms. Burford accepted a deeply discounted internet campaign ad from Rosanbalm Communications, LLC.¹ Mr. Lackey argues that this was a corporate donation because the fee was undercharged. Evidence indicated that the ad was 30 seconds long and required about 30 minutes to produce. In order to prove his allegation, Mr. Lackey presented testimony from Matthew Phelps, a wedding videographer. Mr. Phelps testified that he normally charges \$750 to \$850 for 30 minutes of work. Mr. Phelps also testified that he has never done a political ad, was not familiar with Ms. Burford's ad, and that he had no knowledge of the factors that might have affected the price of the video. Mr. Rosanbalm also

¹ The law in Kentucky regarding whether or not an LLC should be treated as a corporation for campaign finance purposes is not settled. *See Protect My Check, Inc. v. Dilger*, 176 F. Supp. 3d 685 (E.D. Ky. 2016). We are going to equate LLCs with corporations for the purposes of this opinion, but in no way are we holding such.

testified in this case. He stated that the ad was easy to make and that he did not give Ms. Burford a discount.

The trial court found that there was no discount. Therefore, there was no illegal corporate contribution. A trial court is in the best position to weigh the evidence and determine which witnesses are most credible. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Here, Mr. Lackey presented testimony from someone who has never produced a political ad and was unfamiliar with the ad in question. Mr. Rosanbalm, who produced the ad, testified there was no discount. We find no reason to reverse this finding.

The second alleged corporate contribution is in the form of a campaign sign placed on a business in downtown Richmond. Mr. Lackey produced evidence that the building was owned by Madison Keeneland, LCC. He alleges that the LLC allowing Ms. Burford to place the sign on its building was a campaign contribution in the form of free ad space.

The trial court dismissed this claim because Mr. Lackey provided no evidence that Ms. Burford knew who owned the building or that she even directed the sign be placed on the building. The court also held that unless the LLC regularly sold advertising space on its building, this would not have been a donation.

We agree with the trial court. Mr. Lackey presented no evidence regarding this sign other than the building being owned by an LLC. No evidence was presented as to who erected the sign, who had authority to put a sign on the building, whether an individual leased the space, or whether the LLC had any say whatsoever in the sign being placed on the building. Mr. Lackey cannot make allegations that an illegal corporate donation was made without presenting any evidence in support.

The third alleged instance of a corporate contribution is a \$500 check from Ramsey Rentals. Mr. Lackey claims that because Ramsey Rentals is an LLC, this was an illegal contribution. The trial court dismissed this claim because Mr. Lackey presented no evidence regarding Ramsey Rentals' corporate status. No one from the bank upon which the check was written was deposed. Also, no one from Ramsey Rentals was deposed. There was also no documentation proving Ramsey Rentals was a corporation or LLC. The trial court speculated that Ramsey Rentals could have been an individual doing business as Ramsey Rentals.

We agree with the trial court. Mr. Lackey completely failed to provide any proof that Ramsey Rentals was an LLC or corporation.

Mr. Lackey's fourth and final allegation of illegal corporate contribution is that employees of Arc Logistics Partners and Wallingford Broadcasting helped write her online campaign ad. He presents evidence in the

form of emails between Darrell Brock, Jr., Vice President of Arc Logistics Partners, and Ms. Burford, and Michael Watkins, Marketing Executive of Wallingford Broadcasting, and Mr. Rosanbalm. These emails show these individuals going back and forth over the wording of Ms. Burford's online campaign ad.

Mr. Lackey claims that because Mr. Brock and Mr. Watkins used their employer provided email accounts to communicate with Ms. Burford and Mr. Rosanbalm, their input on the campaign ad should be considered a corporate contribution. Ms. Burford claims that Mr. Brock and Mr. Watkins were friends who were volunteering their time.

KRS 121.015(7)(a) states that a contribution does not include “[s]ervices provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, a slate of candidates, committee, or contributing organization[.]” After reading the emails, it is clear that these were merely individuals volunteering their own time to help Ms. Burford. Mr. Lackey presented no evidence that Mr. Brock and Mr. Watkins were working on behalf of their corporate employers.

As for Ms. Burford's cross-appeal, she argues that the trial court abused its discretion in denying her CR 11 motion for sanctions and attorney fees. CR 11 states:

Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by Rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certification 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. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. 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. The Court shall postpone ruling on any Rule 11 motions filed in the litigation until after entry of a final judgment.

We review the denial of CR 11 sanctions for an abuse of discretion.

Lexington Inv. Co. v. Willeroy, 396 S.W.3d 309, 313 (Ky. App. 2013). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary,

unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Ms. Burford claims this lawsuit was frivolous and she should be awarded attorney fees. The trial court found that although some of Mr. Lackey’s claims may have been without merit, it could not categorize all of his claims as such. The court found CR 11 sanctions to be an extraordinary remedy and denied Ms. Burford’s motion.

We find that the trial court did not err. “Rule 11 sanctions are to be used only in extraordinary circumstances and this Court has previously emphasized that it is not a vehicle to obtain relief by one who has suffered damages by simple negligence in the filing of a lawsuit or by the filing of a meritless lawsuit.” *Yeager v. Dickerson*, 391 S.W.3d 388, 395–96 (Ky. App. 2013) (quotation marks and citation omitted).

[T]he only appropriate award of attorney’s fees as a sanction comes when the very integrity of the *court* is in issue. To that end, attorney’s fees may be awarded under Civil Rule 11 for filing pleadings that are not “well grounded in fact,” not “warranted by existing law or a good faith argument for the extension, modification or reversal of existing law,” or that are filed for “any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” (Emphasis in original).

Bell v. Com., Cabinet for Health & Family Servs., Dep’t for Cmty. Based Servs., 423 S.W.3d 742, 749 (Ky. 2014).

While some of Mr. Lackey's claims may have lacked merit and may not have been well grounded in fact, not all were as such. We also cannot say that the integrity of the court was violated by the lawsuit. We find that the trial court's denial of CR 11 sanctions was reasonable and not an abuse of discretion.

Based on the foregoing, we affirm the judgment of the trial court.

THOMPSON, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE

OPINION.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent from the majority opinion. While I concur with the majority that Ms. Burford violated no laws and won her school board seat fairly, I disagree with the majority's opinion that Ms. Burford is not entitled to Rule 11 sanctions against Mr. Lackey.

CR 11 requires:

The signature of an attorney or party constitutes a certification 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.

CR 11. In determining whether to impose sanctions, a trial court must find that an attorney has unreasonably signed a pleading or motion which lead to abusive

litigation. *Lexington Inv. Co. v. Willeroy*, 396 S.W.3d 309, 312-13 (Ky. App. 2013).

Our courts do not see CR 11 sanctions as a method to obtain relief by one who has suffered damages by simple negligence in the filing of a meritless lawsuit. *Clark Equip. Co., Inc. v. Bowman*, 762 S.W.2d 417, 420 (Ky. App. 1988). The imposition of sanctions is only intended for exceptional circumstances, cases where it is demonstrated that a party or his lawyer has signed a paper in violation of the rule. The trial court must consider whether at the time the attorney signed the offending pleading it was reasonable under the circumstances. *Id.*

Where a trial court denies sanctions, our review is limited to a determination of whether the trial court abused its discretion. *Id.* at 420.

The trial court found that many of the allegations in Mr. Lackey's original complaint were based on conjecture and found to be untrue. In its final order the trial court stated, in relevant part:

For example, he alleged that Burford owned Jazzersize, which she in fact did not. He alleged that a banner on a school bus . . . was campaign related, even though Samantha Burford's candidacy was not mentioned. He alleged that Burford was a member of the Madison County School Site Based Council during her campaign, which she was not. He alleged that her appearances as part of her job on MCSTV ads for sponsors was campaign advertising, even though no mention of her candidacy or her status as a candidate was mentioned.

The trial court also found that the burden was on Mr. Lackey to prove his case by substantial evidence, and the court concluded that “[t]he record is simply void of credible evidence of any wrong doing by [Burford], much less substantial evidence. . . . [T]here is simply a lack of evidence proving either participation in, or knowledge of wrongdoing on the part of the Defendant.”

CR 11 requires that pleadings be “well grounded in fact” and “formed after reasonable inquiry.” In addition, they must be “warranted by existing law” or by a good-faith interpretation of existing law. Here, Mr. Lackey’s claims, as determined by the trial court, were based on mere speculation that was false, evidencing his failure to investigate his facts before filing his lawsuit against Ms. Burford.

Perhaps of equal significance, Mr. Lackey is an attorney, duly licensed by the Kentucky Bar Association, who chose to represent himself. By virtue of his profession as an attorney, the public is entitled to rely on his admission to the practice of law as a certification of his “honesty, high ethical standards, and good moral character.” *Grigsby v. Ky. Bar Ass’n*, 181 S.W.3d 40, 43 (Ky. 2005).

Because of the unfounded, false, and misleading allegations Mr. Lackey stated in his complaint, he has violated the standards set forth in CR 11. As an attorney representing himself in the litigation, he has incurred no legal fees

or expenses other than the filing fees. Yet he has placed Ms. Burford in a position of incurring legal fees not only for the litigation, but for the appellate process as well.

CR 11 dictates that sanctions are appropriate in this circumstance. Mr. Lackey's lawsuit, which was not based upon facts or a good faith interpretation of the law, stands in violation of CR 11 since it was unreasonably signed and led to an abuse of the litigation process. *Lexington Inv. Co.*, 396 S.W.3d at 312-13.

For the foregoing reason, I dissent from the majority and believe that the trial court abused its discretion when it denied Ms. Burford's motion for CR 11 sanctions.

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