

AMANDA J. STILTNER

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NO. 2000-CA-2751

VERSUS

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COURT OF APPEAL

SAMUEL STILTNER

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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CONSOLIDATED WITH:

CONSOLIDATED WITH:

SAMUEL STILTNER

NO. 2000-CA-2752

VERSUS

**AMANDA BOTELER, WIFE OF
SAMUEL STILTNER**

APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NOS. 82-367 C/W 82-373, DIVISION "C"
HONORABLE WAYNE CRESAP, JUDGE

**JAMES F. MCKAY, III
JUDGE**

(Court composed of Judge Charles R. Jones, Judge James F. McKay, III,
Judge David S. Gorbaty)

SALVADOR J. RANDAZZO
Chalmette, Louisiana

Attorney for Appellant, Amanda J. Stiltner

TRACY ANN PETRUCCELLI
LAW OFFICES OF MARY BEOUBAY PETRUCCELLI
Chalmette, LA 70043
Attorney for Appellee, Samuel Stiltner

AFFIRMED

The defendants, Salvador Randazzo and Amanda Stiltner appeal the trial court's judgment imposing sanctions of \$500.00 for attorney's fees plus \$85.00 in court costs and by ruling that the motion to disqualify counsel was frivolous and without merit.

The underlying issue in the instant case involves domestic custody issues between Samuel Stiltner and Amanda Stiltner concerning their minor child. The trial court issued reasons for judgment. Although, reasons for judgment are not necessarily part of the judgment, they do afford this Court great insight into the trial court's decision.

On December 10, 1999, a petition for sole custody or in the alternative joint custody and child support, was filed by Salvador Randazzo on behalf of his client Amanda Stiltner, naming Samuel Stiltner and the child's maternal grandparents, Warren Boteler and Lillie Boteler, as co-defendants, who were all represented by Tracy Ann Petrucelli. A hearing on the custody issue

was held on January 28, 2000, and as a result of this hearing a consent judgment was entered by all parties and signed on February 4, 2000. On February 18, 2000, Mr. Randazzo filed a motion to disqualify counsel. On February 25, 2000, he filed a motion to modify consent judgment and for special visitation. On March 27, 2000, Ms. Petruccelli filed a motion for extension of time to respond to discovery requests. On April 10, 2000, Ms. Petruccelli filed a rule for sanctions with attached memorandum along with supporting affidavits, in response to the motion to disqualify counsel filed by Mr. Randazzo. On April 19, 2000, the trial court granted the rule for sanctions and ruled the motion to disqualify counsel as frivolous and without merit. We agree.

The defendant argues that the motion to disqualify counsel was reasonable and in good faith citing the Rules of Professional Conduct Rule

1.7. which states:

Loyalty is an essential element in the lawyer's relationship to a client. Therefore:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after

consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Ms. Petruccelli argues that her clients were the Botelers and Mr. Stiltner, not Amanda Stiltner, and that all of her clients understood that they were all being sued by Amanda Stiltner. In fact they signed affidavits that they had no objection to Ms. Petruccelli representing them. Ms. Petruccelli also argues that Ms. Stiltner has no right to object to this joint representation. We agree. Rule 1.7 clearly indicates that an attorney client relationship is necessary for the rule to apply. Ms. Stiltner has no such relationship with Ms. Petruccelli. Mr. Randazzos's argument in support of his motion to disqualify counsel lacks merit. A simple reading of the rule obviates the lack of his client's standing to object to Ms. Petruccelli's representation of Mr. Stiltner or the Botelers. The trial court was correct in dismissing the motion and finding it to be frivolous and without merit and

therefore sanctionable.

Appellant further argues that the trial court erred in sanctioning both Mr. Randazzo and Amanda Stiltner pursuant to La.C.C.P. art. 863. The "abuse of discretion" standard of appellate review applies to the trial court's finding that a violation of article 863 has occurred and to its determination of the amount and type of sanction imposed. *Diesel Driving Academy, Inc. v. Ferrier*, 563 So.2d 898 (La.App. 2nd Cir.1990). Upon determining that a violation of Article 863 has occurred, the trial court has considerable discretion regarding the type and severity of sanctions to be imposed. *Joyner v. Wear*, 27,631 (La.App. 2 Cir. 12/6/95), 665 So.2d 634. Article 863 authorizes an award of "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, including a reasonable attorney's fee." The amount of the sanctions imposed is reviewed under the abuse of discretion standard. *Sternberg v. Sternberg*, 97-101 (La. App. 5 Cir. 5/28/97), 695 So.2d 1068. Furthermore, upon appellate review a trial court's findings as to a sanctionable violation of article 863 may not be disturbed unless the record furnishes no evidence to

support the finding is clearly wrong. *Fairchild v. Fairchild*, 580 So.2d 513, 517 (La. App. 4 Cir. 1991); *Loyola v. A Touch of Class Transportation Services Inc.*, 580 So.2d 506 (La. App. 4 Cir. 1991).

In the instant case, the trial court awarded sanctions, and in its reasons for judgment found that Mr. Randazzo's Motion to Disqualify was filed "to harass, or cause unnecessary delay or needless increase in the cost of litigation." Pursuant to art. 863 (D), the trial court is clearly within his authority to sanction both Mr. Randazzo and his client Ms. Stiltner. The appellants' argument is without merit. Accordingly, we find no error in the trial court's assessment of this situation and his judgment sanctioning both appellants. For the foregoing reasons the judgment of the trial court is affirmed.

AFFIRMED