STATE OF MICHIGAN

COURT OF APPEALS

LEUWANIA BYGRAVE,

Plaintiff-Appellant,

v

STANLEY R. VAN REKEN, Individually, HARRIET E. VAN REKEN, Individually, BANNER REALTY AND INVESTMENT COMPANY, An Assumed Name Business, JOHN E. McCAUSLIN, Attorney Agent and Individually, Jointly and Severally,

Defendants-Appellees.

UNPUBLISHED
May 4, 2001

No. 218048
Oakland Circuit Court
LC No. 95-494181-CK

Before: Bandstra, C.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from an order dismissing her lawsuit, which involved a real estate dispute. The trial court had ordered plaintiff to pay $2,000 in sanctions for falsely accusing defendant McCauslin, one of the defense attorneys as well as a party in the lawsuit, of racism. Because plaintiff made no effort to pay the sanctions, the trial court dismissed the case. We affirm.

During a motion hearing, plaintiff, representing herself, stated, "[a]nd then [McCauslin] files racial slurs in his pleadings. He said that I was a crazy, maniacal gorilla, I know what those terms mean." McCauslin denied writing such a statement. The court asked plaintiff to produce the allegedly racist pleading at a later hearing, and she agreed to do so. At the later hearing, it was revealed that the pleadings at issue in fact referred to "[p]laintiff's maniacal drive to injure [d]efendants" and stated that "[t]his is nothing more that a guerrilla campaign designed to injure, harass and damage defendants in their contracts, property and reputations."

The court stated that because plaintiff had not produced a pleading containing the word "gorilla," it was assessing a $1,500 sanction against plaintiff with regard to McCauslin, a $250 sanction against plaintiff with regard to McCauslin's attorney, Kurt Schnelz, and a $250 sanction against plaintiff with regard to one of the Van Rekens' attorneys, Thomas McKenney (for a total of $2,000 in sanctions). The trial court signed an order imposing the $2,000 in sanctions. The

order indicated that if plaintiff did not pay within fourteen days, the court "will entertain [an] order to dismiss."

Over six months later, defendants filed a motion to dismiss plaintiff's case for failure to comply with the order to pay sanctions. The court ruled that because there had been no attempt to comply with the order assessing sanctions, it was granting the motion to dismiss.

Plaintiff argues that because the sanctions were not issued for contempt of court, and because there was no other lawful basis on which the court could have assessed sanctions for plaintiff's statements, the order of dismissal must be reversed. We disagree.

Indeed, while we agree that the court did not impose the sanctions for contempt of court, the court had other authority for imposing them. In *Cummings v Wayne Co*, 210 Mich App 249, 250-251; 533 NW2d 13 (1995), the trial court dismissed the plaintiff's personal injury case because he had been threatening witnesses. On appeal, the plaintiff argued that the trial court had no authority to dismiss his case. *Id*. at 251. This Court ruled:

> The central issue on appeal is whether dismissal with prejudice was a proper sanction. Plaintiff argues that the trial court lacked authority to impose such a drastic sanction. The trial court held that such authority was "inherent." It also found that plaintiff's actions justified the presumption that his claim lacked merit.
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> Plaintiff urges that Michigan court rules and statutes do not adequately address a court's authority to sanction the kind of misconduct in this case. However, it would be an absurd anomaly to recognize a court's authority to dismiss an action for lack of progress, see MCR 2.502, or for discovery abuses, see MCR 2.313, and yet leave the court impotent to control its own proceedings when they have been tainted by much more flagrant misconduct. *We believe the court has inherent authority to sanction misconduct.*
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> The authority to dismiss a lawsuit for litigant misconduct is a creature of the "clean hands doctrine" and, despite its origins, is applicable to both equitable and legal damages claims. . . . The authority is rooted in a court's fundamental interest in protecting its own integrity and that of the judicial process. . . . While this Court has recognized that substantive distinctions between law and equity survived the procedural merger of law and equity, . . . we do not believe that the distinction prevents a court of law from invoking the "clean hands doctrine" when litigant misconduct constitutes an abuse of the judicial process itself and not just a matter of inequity between the parties. The "clean hands doctrine" applies not only for the protection of the parties but also for the protection of the court. . . . "[T]ampering with the administration of justice . . . is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." . . . .

> Although plaintiff contends that the cases cited by the trial court in support of the order of dismissal involved violations of specific court rules or orders, . . . plaintiff also concedes that at least one of these cases recognized the inherent authority of courts to sanction litigant misconduct, ... We note that "[b]ecause [these] inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion." . . . .
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> We do not believe the trial court's decision to dismiss the action was the result of unrestrained discretion or imprudence. *The court clearly acknowledged the harshness of the sanction and balanced it against the gravity of plaintiff's misconduct.* The nature of the threats and the actual vandalism committed permanently deprived the court of the opportunity to hear the testimony of witnesses who would be able to testify openly and without fear. Dismissal under these circumstances was not improper. [*Id*. at 251-253; citations omitted; emphasis added.]

Cummings provided authority for the trial court's assessment of sanctions against plaintiff in this case. Indeed, plaintiff made unfounded and unjustified allegations of racism against McCauslin, an attorney, in open court, and the court was authorized to sanction this misconduct. While it is true that *Cummings* did not specifically address monetary sanctions, we conclude that if a trial court may *dismiss a case* for litigant misconduct, it may also impose monetary sanctions for litigant misconduct. Moreover, the amount assessed did not constitute an abuse of discretion, given the serious nature of plaintiff's unfounded allegations and the potential damage to McCauslin's reputation and livelihood.

Plaintiff next argues that even if the trial court's assessment of sanctions was proper, the court should not have dismissed her case for failure to pay them, because plaintiff could not afford to pay the sanctions, as demonstrated by her affidavit. We disagree that the trial court erred. As noted *infra*, the court dismissed plaintiff's lawsuit because "[t]here'[d] been no *attempt* to comply" (emphasis added). The court was justified in making this ruling. Indeed, MCR 2.504(B) authorizes a court to dismiss a case for failure to abide by a court order. Here, even accepting plaintiff's affidavit as true, plaintiff did not make even an *attempt* to pay. For example, she did not inquire about the possibility of small monthly payments; at the motion hearing, her attorney admitted that he had not discussed the possibility of partial payments with her. Moreover, we note that plaintiff did not attempt to appeal the order assessing sanctions nor the court's declination to reconsider the order. It was within the court's discretion to dismiss the case.

Plaintiff additionally argues that the trial court should have granted her motion to disqualify the trial judge (which she brought after the discussion of potential sanctions but before they were actually imposed), since he had personal animosity towards her and personal ties to defendants. Plaintiff stated in her motion that disqualification of the judge was necessary because (1) he wrongly granted summary disposition to defendants in an earlier phase of the lawsuit; (2) he wrongly denied her leave to amend her complaint; (3) he wrongly threatened her with sanctions; (4) one of the Van Rekens' attorneys had previously served as his law clerk; and (5) McCauslin's attorney's firm had represented the judge on a legal matter.

We disagree that the trial court abused its discretion in failing to disqualify itself. See *People v Bennett*, 241 Mich App 511, 513; 616 NW2d 703 (2000) (setting forth standard of review). Indeed, adverse rulings, even erroneous ones, provide no basis for disqualification. See *Ireland v Smith*, 214 Mich App 235, 249; 542 NW2d 344 (1995), affirmed and modified on other grounds 451 Mich 457 (1996). Moreover, "[a]s a general rule, a trial judge is not disqualified absent a showing of actual bias or prejudice." *Id*. at 250. Plaintiff did not demonstrate an actual bias. The judge indicated that he did not give his former law clerk "favoritism" and that the matter in which the other defense attorney's firm was involved was "dormant."

As stated in *Ireland*, *supra* at 250, disqualification can be warranted even if a judge *expresses* impartiality, if there are circumstances causing doubt regarding the judge's partiality, bias, or prejudice. However, as stated in *Rust v Rust*, 143 Mich App 704, 707; 373 NW2d 197 (1985), "[a] party seeking to disqualify a judge on the basis of bias or prejudice bears the heavy burden of overcoming the presumption of judicial impartiality." Here, the mere assertions that a defense attorney's firm had represented the judge in some unknown matter and that another defense attorney served as the judge's law clerk at some unspecified time in the past were insufficient to overcome the "heavy" presumption of impartiality, in the absence of a more specific demonstration of favoritism. We find no abuse of discretion.

Given our resolution of the case, we need not address the additional arguments that plaintiff raises on appeal.

Affirmed.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Patrick M. Meter