

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 202

Matthew Beland, Plaintiff and Appellant
and
Sarah M. Kyte, Interested Party and Appellant
v.
Jeremiah Danel,
Jeremiah Danel, D.D.S., P.C., Defendants and Appellees

No. 20220057

Appeal from the District Court of Grand Forks County, Northeast Central
Judicial District, the Honorable Lolita G. Hartl Romanick, Judge.

AFFIRMED.

Opinion of the Court by Jensen, Chief Justice.

Tyler J. Morrow, Grand Forks, ND, for plaintiff and appellant Matthew Beland,
and interested party and appellant Sarah M. Kyte.

Jennifer E. Albaugh and Matthew D. Kirschenmann, Fargo, ND, for
defendants and appellees; submitted on brief.

Beland v. Danel
No. 20220057

Jensen, Chief Justice.

[¶1] Matthew Beland and Sarah Kyte appeal from an amended judgment entered after the denial of Beland’s motion for a temporary restraining order and motion for sanctions against Jeremiah Danel and Jeremiah Danel, D.D.S., P.C., and the granting of Danel’s motion for sanctions against Beland and Kyte. We affirm the amended judgment.

I

[¶2] Beland and his former spouse have shared joint legal custody over their two minor children since divorcing in 2015. Beland, with the assistance of his counsel, Kyte, filed an ex parte motion for a temporary restraining order along with a complaint seeking injunctive relief against Danel to stop dental services from being provided to Beland’s children. The complaint also sought full disclosure of the children’s dental records for services already received.

[¶3] Beland amended his complaint after the Minnesota court with jurisdiction over the family law proceedings granted Beland’s former spouse temporary decision-making authority over the children’s dental care, and subsequent to being notified by Danel that all dental services for Beland’s children had been discontinued. The amended complaint sought assurances that Danel would not resume services for the children without Beland’s express permission. Both parties filed motions for sanctions.

[¶4] The district court denied Beland’s request for a temporary restraining order and injunctive relief, and granted Danel’s motion for sanctions, finding that Beland and Kyte’s commencement of litigation was done for the improper purpose of exercising control over Beland’s former spouse’s decisions, and usurping Minnesota family court proceedings in violation of N.D.R.Civ.P. 11(b)(1). The court also found Beland’s claims lacked evidentiary support in violation of N.D.R.Civ.P. 11(b)(3). The court noted that N.D.R.Civ.P. 11(b)(2) was not violated because Beland and Kyte’s request for dental records had merit.

II

[¶5] A district court’s determination to award sanctions is reviewed for abuse of discretion. *Puklich v. Puklich*, 2022 ND 158, ¶ 16, 978 N.W.2d 668. “A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination.” *Id.* (quoting *Toman Eng’g Co. v. Koch Constr., Inc.*, 2022 ND 104, ¶ 17, 974 N.W.2d 680). “If there are any factual determinations relevant to the sanction issue, we review the trial court’s findings under a clearly erroneous standard.” *Dietz v. Kautzman*, 2004 ND 119, ¶ 15, 681 N.W.2d 437. “A finding of fact is clearly erroneous if there is no evidence to support it, or if, based on the entire record, [this Court is] left with a definite and firm conviction a mistake has been made.” *Brotten v. Brotten*, 2017 ND 47, ¶ 10, 890 N.W.2d 847.

[¶6] Generally, under North Dakota law, each party is responsible for their own attorney’s fees. *Strand v. Cass Cty.*, 2008 ND 149, ¶ 9, 753 N.W.2d 872. However, N.D.R.Civ.P. 11(b) allows a district court to sanction parties and award attorney’s fees for specified violations of the rule. The rule requires pleadings (1) not be presented for an improper purpose, (2) be warranted by existing law or a nonfrivolous argument to change it, and (3) contain factual contentions, or (4) denials that have or will have evidentiary support after reasonable investigation. N.D.R.Civ.P. 11(b)(1)-(4).

When sanctioning a party, the district court should consider [1] “the culpability, or state of mind, of the party against whom sanctions are being imposed; [2] a finding of prejudice against the moving party, and the degree of this prejudice, including the impact it has on presenting or defending the case; and, [3] the availability of less severe alternative sanctions.”

Heinle v. Heinle, 2010 ND 5, ¶ 30, 777 N.W.2d 590 (quoting *Dronen v. Dronen*, 2009 ND 70, ¶ 52, 764 N.W.2d 675). *See also Ringsaker v. ND Workers Comp. Bureau*, 2003 ND 122, ¶ 13, 666 N.W.2d 448. In denying sanctions, a district court may consider whether the motioning party moved early in the proceedings to strike or dismiss their opponent’s claim. *Strand*, at ¶ 20.

III

[¶7] Beland and Kyte assert the district court abused its discretion in imposing sanctions against them. They argue the court erroneously found Beland’s action was not initiated for a just and proper purpose, erred in finding Beland’s factual allegations did not have evidentiary support, erred in imposing sanctions sua sponte, erred by failing to consider all of the factors outlined in *Heinle*, and the sanctions were not reasonably proportionate to the conduct. Kyte also argues the court failed to provide sufficient findings to impose the attorney’s fees award against her as Beland’s attorney.

A

[¶8] Beland and Kyte argue the district court erred in finding that Beland’s continued pursuit of injunctive relief, after Danel had provided notice he would no longer provide dental services to the children, was neither just nor proper. They argue because Danel could have re-commenced services for the children at any point, prospective restraint was just and proper. They further argue the claim seeking the temporary restraining order was confirmed as being just and proper when the court denied Danel’s motion to dismiss and subsequently held an evidentiary hearing. Finally, they contend the court acknowledged the claim for injunctive relief was just and proper when it refused to impose sanctions under N.D.R.Civ.P. 11(b)(2) after finding request for records had merit.

[¶9] While Beland and Kyte are correct that the district court denied Danel’s motion to dismiss, held an evidentiary hearing, and initially noted that the request for records had some merit, they ignore other findings made by the court. The court expressly noted that the primary reason for sanctions was because “Beland and his attorney both had access to . . . evidence prior to [the hearing]” that was not previously presented to the court. Once the court evaluated the additional evidence presented at the hearing, it found Beland and Kyte should have known they would not succeed on the asserted claims and further found the litigation was initiated “for the improper purpose of attempting to obtain through Danel DDS information, access, and control over his children’s orthodontic care that he could not obtain through the Minnesota divorce court[.]” The court found that Beland knew from the outset of the action

that he would not be able to identify any records he had not received. The court made specific findings regarding Beland's extensive, and disruptive, pre-litigation demands for records from Danel, and ultimately found Beland had received all of the treatment records prior to initiating the action against Danel. The court did not misapply the law, there is evidence in the record to support the court's finding, and after a review of the record, we are not left with a definite and firm conviction a mistake has been made. The court's finding that Beland's action was not brought for a just and proper purpose is not clearly erroneous.

B

[¶10] Beland and Kyte argue the district court erred in finding Beland's allegations did not have evidentiary support. Specifically, the court found "there is such a complete absence of actual facts regarding Beland's ongoing litigation and continued pursuit of orthodontic records when they had been provided previously, that a reasonable person could not have thought that a court would render judgment in Beland's favor." This finding was made after the court provided extensive findings regarding Beland's numerous demands for the production of records from Danel, extensive findings on Danel's compliance with those demands, and Beland's inability to identify documents he demanded but did not receive. It also followed the court's finding that Beland and Kyte were aware Danel had stopped providing dental services to the children. The court did not misapply the law, there is evidence in the record to support the court's finding, and after a review of the record we are not left with a definite and firm conviction a mistake has been made. The court's finding that Beland's allegations did not have evidentiary support is not clearly erroneous.

C

[¶11] Beland and Kyte argue the district court erred by imposing sanctions sua sponte, without notice or an opportunity to respond, asserting the court's sanctions were premised on Beland's failure to prevail, premised on documents submitted during the evidentiary hearing, and initiated on the court's own motion. Beland and Kyte's arguments are contrary to the record.

[¶12] The sanctions were imposed under N.D.R.Civ.P. 11. Rule 11(c)(2) which reads as follows:

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. The respondent must have 10 days after a motion for sanctions is filed to serve and file an answer brief and other supporting papers. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

Danel served a Rule 11 motion asserting that the Amended Complaint violated Rule 11(b)(1)-(3). After Beland and Kyte were afforded the 21-day safe harbor as provided in Rule 11(c)(2), Danel filed the motion to dismiss the lawsuit, including the request for sanctions.

[¶13] After a full evidentiary hearing the district court found as follows:

As discussed more fully below, the weight of the evidence does not support the ongoing litigation of this case. Beland accomplished his goal of ending Danel DDS's care for his minor children within days of having commenced this lawsuit. The weight of the evidence establishes that Beland had been provided all his children's dental records before this litigation commenced. Even if the court were to accept Beland's claim that more documents were provided in discovery, which he failed to establish and the court so found, the evidence was clear that Beland had received all the children's dental records shortly after litigation commenced. Thus, continued pursuit of this lawsuit beyond getting records and termination of the children's dental care with Danel DDS simply is not supported by the evidence. Rather, Beland's continued pursuit of this lawsuit appears to have been done more for an improper purpose of gaining control over [Beland's former spouse's] actions and choices which he was unable to do in the Minnesota divorce case between them.

These findings were issued after Beland and Kyte were given an opportunity to correct or withdraw the offending pleadings and a full evidentiary hearing scheduled to consider the pending motions for sanctions. The sanctions were imposed for conduct alleged in Danel's motion for sanctions. We are not persuaded the sanctions were imposed without notice and on the court's own motion as claimed by Beland and Kyte.

D

[¶14] Beland and Kyte argue the district court erred by failing to consider all of the factors outlined in *Ringsaker v. Workers Comp. Bureau*, 2003 ND 122, ¶¶ 11-13, 666 N.W.2d 448.

When sanctioning a party, the district court should consider [1] “the culpability, or state of mind, of the party against whom sanctions are being imposed; [2] a finding of prejudice against the moving party, and the degree of this prejudice, including the impact it has on presenting or defending the case; and, [3] the availability of less severe alternative sanctions.”

Heinle, 2010 ND 5, ¶ 30 (quoting *Dronen*, 2009 ND 70, ¶ 52); *Ringsaker*, at ¶ 13.

1

[¶15] The district court found that Beland initiated the action for the “improper purpose of gaining control over [Beland's former spouse's] actions and choices which he was unable to do in the Minnesota divorce case between them.” The court also found Beland's “behavior was unusual, repetitive, and, at times, aggressive.” While not expressly addressing Beland's mental state or culpability, it is clear from a review of the findings as a whole, the court found Beland acted intentionally to pursue an improper purpose. We are not left with any uncertainty regarding the court's findings, and conclude the findings are sufficient to satisfy the court's required consideration of Beland's culpability and state of mind.

[¶16] The district court noted the impact the litigation had on Danel and his dental office staff, both emotionally and to their business practice. The court found the following:

Beland's actions in pursuing not just this litigation, but also in presenting a claim to the North Dakota Board of Dental Examiners caused Defendants to incur stress and time away from normal business practice, placed into question the professional competence and reputation of both Danel and Danel DDS, and caused them to incur additional legal fees, all to their prejudice. Beland and his attorney both participated in these actions while having knowledge of the evidence that was presented to this court.

While not expressly indicating it was considering the prejudice against Danel, and the degree of the prejudice, including the impact it had on presenting claims or defending against claims, we are not left with any uncertainty regarding the court's findings. We conclude the findings are sufficient to satisfy the court's required consideration of the prejudice against the moving party, and the degree of this prejudice, including the impact it has on presenting or defending the case.

[¶17] Referencing our decision in *Heinle*, the district court considered what would be an appropriate sanction for Beland and Kyte's conduct, noting the following: "Applying *Heinle*, this court may impose only sanctions proportionate to Beland's and his attorney's misconduct, limiting the sanction to what is 'sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.'" After reviewing the relevant facts, and reducing the amount of attorney's fees requested by Danel, the court found its award of attorney's fees was in an amount "sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." While not expressly addressing the availability of less severe alternative sanctions, it is clear from a review of the findings as a whole, the court adequately considered the appropriate sanction sufficient to deter similar future misconduct. We are not

left with any uncertainty regarding the court's findings, and conclude the findings are sufficient to satisfy the court's required consideration of the availability of less severe sanctions.

E

[¶18] Beland and Kyte argue the award of attorney's fees was not proportional to the conduct. The district court, after citing to our decision in *Heinle*, made findings to insure it would only impose a sanction "proportionate to Beland's and his attorney's misconduct, limiting the sanction to what is 'sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.'" The court made findings on Beland and Kyte's knowledge that Beland would not prevail on his claims, the cost of the litigation, how Danel may have contributed to the cost of the litigation, and how Beland's actions had created inappropriate stress on a third party to his divorce litigation. After a review of the record, we conclude the award was not arbitrary, unreasonable, or rendered in an unconscionable manner. The award did not misinterpret or misapply the law, and the decision was the product of a rational mental process leading to a reasoned determination. The court did not abuse its discretion in the award of attorney's fees.

F

[¶19] Kyte argues the district court improperly extended the sanction to her in her capacity as Beland's attorney, arguing there is a lack of findings drawing a nexus between the sanctioned conduct and her. The court found the post-hearing pleadings included assertions of fact not supported by the evidence produced at the hearing. The court found that both Beland and Kyte were notified Danel had terminated dental services to the children and "[w]ell before trial, both Beland and his attorney were aware of the evidence that was presented at trial." The court further found the following:

Beland's actions in pursuing not just this litigation, but also in presenting a claim to the North Dakota Board of Dental Examiners caused Defendants to incur stress and time away from normal business practice, placed into question the professional competence and reputation of both Danel and Danel DDS, and

caused them to incur additional legal fees, all to their prejudice. Beland and his attorney both participated in these actions while having knowledge of the evidence that was presented to this court.

After a review of the record, we conclude the imposition of sanctions against Kyte was not arbitrary, unreasonable, or rendered in an unconscionable manner. The award did not misinterpret or misapply the law, and the decision was the product of a rational mental process leading to a reasoned determination. The court did not abuse its discretion in imposing the sanctions against Kyte.

IV

[¶20] Beland argues the district court abused its discretion in denying his motion for sanctions. Beland’s motion for sanctions was premised on several statements made by Danel in his pleadings, both in his answer and motion for sanctions, that Beland asserted were untrue. The court reviewed each statement identified by Beland as being false and concluded that each statement was either true, quickly corrected, or not legally relevant. The court also noted that Beland’s failure to file a “Motion to Strike [or] a Motion for More Definite Statement” was evidence of Danel’s meritorious pleadings under *Strand*. After our review of the record, we conclude the court did not act arbitrarily, unreasonably, or in an unconscionable manner. The court did not misinterpret or misapply the law. We further conclude the court’s decision was the product of a rational mental process leading to a reasoned determination. The court did not abuse its discretion in denying Beland’s motion for sanctions.

V

[¶21] Beland argues his injunctive relief claim was dismissed sua sponte. He contends the district court denied the earlier motion to dismiss and the only motions pending before the court were limited to the motions to impose sanctions. He concludes that because there was not a pending motion to dismiss, the dismissal of the claim for a temporary restraining order was improper.

[¶22] Beland and Kyte ignore the substance of the proceedings below. Danel’s motion for sanctions included the following request for relief: “At this point, there is no existing law supporting the Plaintiff’s claims and his entire action is frivolous and the same should be dismissed.” Danel’s motion for sanctions, and the subject matter of his motion for sanctions, was that Beland’s action lacked merit. The district court provided extensive findings on the request for a temporary restraining order. The parties argued the merits of a temporary restraining order. The court found the request for a temporary restraining order was neither just nor proper. Beland also ignores the action of this Court remanding the case for the entry of an amended judgment to confirm whether or not issues remained pending in the district court, and Beland offered no objection to the finality of the court’s prior order as reflected in the amended judgment. After a review of the record, we conclude the court’s dismissal of Beland’s claim for a temporary restraining order was not rendered sua sponte, Beland had adequate notice of the pleadings, and Beland had an adequate opportunity to prove his request for a temporary restraining order was just and proper.

VI

[¶23] Danel argues he is entitled to attorney’s fees and costs on appeal under N.D.R.App.P. 38 because Beland and Kyte’s appeal is frivolous. Under N.D.R.App.P. 38, if this Court finds an appeal frivolous, “damages and single or double costs, including reasonable attorney’s fees” may be awarded. “An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which could be seen as evidence of bad faith.” *Lucas v. Porter*, 2008 ND 160, ¶ 28, 755 N.W.2d 88 (quoting *Witzke v. City of Bismarck*, 2006 ND 160, ¶ 19, 718 N.W.2d 586). We conclude that Beland’s appeal is not frivolous under N.D.R.App.P. 38 as the appeal is not so “flagrantly groundless” that it evidences filing in “bad faith.”

VII

[¶24] The district court’s factual findings were not clearly erroneous. The district court’s decision to deny Beland his requested relief and motion for sanctions against Danel, and grant Danel’s motion for sanctions against

Beland and Kyte was not an abuse of discretion. We affirm the district court's amended judgment.

[¶25] Jon J. Jensen, C.J.

Gerald W. VandeWalle

Daniel J. Crothers

Lisa Fair McEvers

Jerod E. Tufte