

[Cite as *Stallworth v. Woods*, 2018-Ohio-3185.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106633

DANA STALLWORTH

PLAINTIFF -APPELLEE

vs.

DOUG WOODS, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-860713

BEFORE: Kilbane, P.J., Boyle, J., and Keough, J.

RELEASED AND JOURNALIZED: August 9, 2018

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendants-appellants, Doug Woods (“Woods”) and What a Lovely Home, L.L.C. (“WLH”) (collectively referred to as “defendants”) appeal the trial court’s denial of their respective motions for sanctions and for plaintiff-appellee, Dana Stallworth (“Stallworth”) to be deemed a vexatious litigant. For the reasons set forth below, we reverse and remand.

{¶2} The instant appeal arises from a lease agreement between Doug Woods d.b.a. What a Lovely Home and Stallworth. Woods was Stallworth’s landlord. Woods and Stallworth had a disagreement over the lease terms and Stallworth eventually filed a complaint in Garfield Heights Municipal Court (“municipal court”) against Woods c/o WLH for breach of contract and retaliatory eviction.¹ Woods filed a counterclaim and was granted judgment in the amount of \$815.99 with interest at the rate of 3 percent per year. Woods then initiated and obtained a garnishment against Stallworth in municipal court. Woods also obtained a judgment lien against Stallworth in Cuyahoga County Common Pleas Court. In attempting to subpoena Stallworth’s financial records, a collection agency hired by Woods filed a subpoena in a case that Stallworth was not a party. Woods filed a notice to quash said subpoena, and the subpoena was subsequently quashed by the trial court. None of Stallworth’s financial records were obtained. Woods, however, states that he was able to garnish \$482 from Stallworth’s bank account.

{¶3} Stallworth then filed a complaint against Woods and WLH. Stallworth amended the complaint to include causes of action for fraud, intentional infliction of emotional distress (“IIED”), conversion, and invasion of privacy. Stallworth alleged that defendants knowingly filed subpoenas in a case that she was not a party and caused her harm. She further alleged that

¹Woods contends that Stallworth erroneously listed “Doug Woods c/o What A Lovely Home, LLC” as the defendant because What a Lovely Home, L.L.C. is a separate and unrelated company from Doug Woods d.b.a. What a Lovely Home.

when the defendants filed a garnishment order in municipal court, they knowingly sent the notice to the wrong address, even though defendants had the correct forwarding address for Stallworth. She claims that as a result of defendants' fraudulent conduct, her personal funds were improperly garnished.

{¶4} The matter proceeded to trial before a visiting judge, who found in favor of defendants.² The court entered judgment for the defendants on October 3, 2017. Three days later, Stallworth moved the court for findings of fact and conclusions of law. On October 27, 2017, Woods and WLH each filed respective motions for sanctions and vexatious conduct against Stallworth. On November 20 2017, the assigned judge, not the visiting judge, denied the respective motions. Nine days later, the visiting judge issued his findings of fact and conclusions of law. In the findings of fact, the visiting judge found that “although the issuance of the subpoena was peculiar, this action did not defraud [Stallworth] nor did it result in an invasion of her privacy.” The judge further found that there was no evidence to support Stallworth's IIED claim. The judge concluded that the defendant had a valid judgment. “The vehicle for collection may be questioned, but that does not constitute a wrongful intrusion into [Stallworth's] account.” Lastly, the judge found that “Doug Woods and ‘What a Lovely Home’ are one and the same. [T]here is no evidence to support any cause of action against ‘What a Lovely Home,’ LLC as it was a separate and distinct legal entity.”

{¶5} Defendants now appeal, raising the following three assignments of error, which shall be discussed together.

Assignment of Error One

²Stallworth dismissed her conversion claim at trial.

The trial court erred and abused its discretion by failing to have the motions for sanctions and vexatious conduct decided by the trial judge who was the real trier of fact.

Assignment of Error Two

The trial court's denial of [defendants'] motions for vexatious conduct was contrary to law, an abuse of discretion and against the sufficiency and manifest weight of the evidence.

Assignment of Error Three

The trial court's denial of [defendants'] motions for sanctions was contrary to law, an abuse of discretion and against the sufficiency and manifest weight of the evidence.

{¶6} Within these assigned errors, defendants essentially argue that the assigned judge abused his discretion when he denied their motions for sanctions and vexatious conduct because the motions should have been decided by the visiting judge, who presided over the trial.

Motions for Sanctions and Vexatious Litigant

{¶7} Defendants argue that because the assigned judge was not the trial judge, it was not reasonable for him to determine whether sanctions were appropriate. Defendants claim that sanctions should be awarded because Stallworth knew that WLH was not a party to the improperly filed subpoena, yet she still frivolously and maliciously instituted litigation against it.

Defendants further claim that Stallworth and her attorney frivolously instituted litigation against Woods just to harass and maliciously injure him. Defendants claim Stallworth and her attorney engaged in sanctionable conduct by alleging frivolous claims that were previously litigated in municipal court.

{¶8} "A determination that a motion for sanctions lacks merit is reviewed under an abuse of discretion standard." *Mitchell v. W. Res. Area Agency on Aging*, 8th Dist. Cuyahoga Nos. 83837 and 83877, 2004-Ohio-4353, ¶ 14, citing *Cook Paving & Constr. Co. Inc. v. Treeline Inc.*, 8th Dist. Cuyahoga No. 77408, 2001-Ohio-4235; *Pisani v. Pisani*, 101 Ohio App.3d 83, 654

N.E.2d 1355 (8th Dist.1995). The term “‘abuse of discretion’ * * * implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” (Citations omitted.) *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

{¶9} Defendants further argue that Stallworth should have been deemed a vexatious litigator against WLH because she included WLH as a party even though she knew it was not a real party in interest, and Stallworth, along with her attorney, attempted to maliciously harm Woods by relitigating claims that were already addressed in municipal court.

{¶10} To declare a person a “vexatious litigator,” it must be found that the person has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action. R.C. 2323.52(A)(3). “Vexatious conduct” is defined as conduct of a party in a civil action that (1) obviously serves merely to harass or maliciously injure another party to the civil action, (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification or reversal of existing law, or (3) is imposed solely for delay. R.C. 2323.52(A)(2)(a)-(c).

{¶11} We find the instant case analogous to cases in which we have previously held that when ruling on a motion, the “successor judge must have the proper evidence before him [or her] to decide the motion.” *Thornton v. Conrad*, 194 Ohio App.3d 34, 2011-Ohio-3590, 954 N.E.2d 666, ¶ 14 (8th Dist.), citing *Potocnik v. Sifco Indus., Inc.*, 103 Ohio App.3d 560, 660 N.E.2d 510 (8th Dist.1995). *See also In re H.R.K.*, 8th Dist. Cuyahoga No. 97780, 2012-Ohio-4054, ¶ 12 (“it is an abuse of discretion to adopt a magistrate’s decision over an objection to factual findings prior to its receipt of a timely requested transcript or other materials necessary to conduct an independent review of the matter.”); *Savioli v. Savioli*, 99 Ohio App.3d 69, 649 N.E.2d 1295 (8th

Dist.1994) (“a trial court abuses its discretion when it rules on objections to a referee’s report without the benefit of a transcript.”); *Elsner v. Birchall*, 8th Dist. Cuyahoga No. 106524, 2018-Ohio-2521 (“[i]t is well-established that a successor judge may rule on a motion for a new trial when a different judge presided at trial [as long as] the successor judge [has] the proper evidence before him to decide the motion.” *Id.*, quoting *Thornton* at ¶ 14, citing *Potocnik*).

{¶12} In the instant case, the matter proceeded to trial before a visiting judge who found in defendants’ favor. Three days later, Stallworth then moved the court for findings of fact and conclusions of law. Three weeks after the visiting judge found in defendants’ favor, the defendants each filed respective motions for sanctions and vexatious conduct against Stallworth. It appears from the record that the originally assigned judge, not the visiting judge, denied these respective motions prior to the benefit of having the visiting judge’s findings of facts and conclusions of law.

{¶13} In the findings of fact, the visiting judge found that “although the issuance of the subpoena was peculiar, this action did not defraud [Stallworth] nor did it result in an invasion of her privacy.” The judge further found that there was no evidence to support Stallworth’s IIED claim. The judge concluded that the defendant had a valid judgment. “The vehicle for collection may be questioned, but that does not constitute a wrongful intrusion into [Stallworth’s] account.” Lastly, the judge found that “Doug Woods and ‘What a Lovely Home’ are one and the same. [T]here is no evidence to support any cause of action against ‘What a Lovely Home,’ LLC as it was a separate and distinct legal entity.”

{¶14} Without the benefit of these findings, the originally assigned judge lacked all of the necessary evidence to determine whether an award of sanctions was appropriate or whether Stallworth is a vexatious litigant. Because the trial court lacked all of the necessary evidence to

make these determinations, the first, second, and third assignment of error are sustained on grounds that the assigned judge's determination was premature.

{¶15} Accordingly, judgment is reversed. The matter is remanded to the assigned judge for a determination on defendants' respective motions for sanctions and vexatious conduct, in light of the visiting judge's findings of fact and conclusions of law.

It is, therefore, considered that said appellants recover of said appellee their costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and
KATHLEEN ANN KEOUGH, J., CONCUR

KEY WORDS: