

[Cite as *State v. Michnay*, 2015-Ohio-2021.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27570

Appellee

v.

CATHY M. MICHNAY

APPEAL FROM JUDGMENT
ENTERED IN THE
STOW MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 2014 CRB 1463

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 27, 2015

HENSAL, Presiding Judge.

{¶1} Joseph Patituce appeals an order of the Stow Municipal Court ordering him to pay the attorney fees of Jay Berk, Ph.D. For the following reasons, this Court reverses.

I.

{¶2} After Cathy Michnay was charged with committing domestic violence against her teenage daughter, her attorney, Mr. Patituce, subpoenaed the daughter’s medical records from Dr. Berk. Dr. Berk moved to quash the subpoena, arguing he could not release the records without the daughter’s consent because she had recently turned 18. The court set a hearing on the motion to quash. At some point before the hearing, Ms. Michnay negotiated a plea deal, which the court accepted on the day of the hearing.

{¶3} Dr. Berk moved to have Ms. Michnay pay his attorney fees, arguing that she should have notified him about the plea negotiations so that he could have avoided hiring an

attorney to represent him at the hearing. The municipal court granted his motion, but, citing Civil Rule 11, ordered Mr. Patituce to pay the fees instead of Ms. Michnay.

{¶4} Ms. Michnay moved for a hearing on the motion for attorney fees. She also moved to stay the award pending appeal. The trial court entered an order explaining that its previous order would stand but granted Ms. Michnay's motion to stay the order. Ms. Michnay then moved for the court to reconsider its order, but it denied her motion. Mr. Patituce has appealed the order granting Dr. Berk's motion for attorney fees, assigning two errors, which this Court has rearranged for ease of consideration.

II.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN IMPOSING MONETARY SANCTIONS UPON DEFENSE ATTORNEY JOSEPH PATITUCE WITHOUT A HEARING.

{¶5} Mr. Patituce argues that the trial court erred when it granted Dr. Berk's motion for attorney fees without holding a hearing. We agree. The Ohio Supreme Court has held that a trial court must hold an evidentiary hearing before imposing sanctions under Civil Rule 11. *State ex rel. Ebbing v. Ricketts*, 133 Ohio St.3d 339, 2012-Ohio-4699, ¶ 24-25.

{¶6} Dr. Berk argues that a hearing was not necessary because the award of attorney fees was not solely based on Rule 11. He notes that, in addition to its authority to enter sanctions under Rule 11, a court has the "inherent power to regulate the practice before it and protect the integrity of its proceedings * * *." *Royal Indem. Co. v. J.C. Penney Co., Inc.*, 27 Ohio St.3d 31, 33-34 (1986). In this case, however, the municipal court did not invoke its inherent authority. In its order granting Dr. Berk's motion, it cited only Rule 11 for its authority to award attorney fees. Furthermore, in its order granting Ms. Michnay's motion to stay, it specifically explained that it had "issued a sanction against defendant's attorney pursuant to Civil Rule 11."

{¶7} Upon review of the record, we conclude that the municipal court erred when it entered a sanction against Mr. Patituce under Rule 11 before holding an evidentiary hearing. *Ricketts* at ¶ 25. Mr. Patituce's assignment of error is sustained. In light of our resolution of this assignment of error, we conclude that Mr. Patituce's first assignment of error, regarding the merits of the court's decision, is not ripe.

III.

{¶8} A court must hold an evidentiary hearing before imposing an award of attorney fees under Civil Rule 11. The judgment of the Stow Municipal Court is reversed, and this matter is remanded for further proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Stow Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

RUSSELL S. BENSING, Attorney at Law, for Appellant.

DAVID M. MAISTROS, Prosecuting Attorney, for Appellee.

SUSAN C. STONE, Attorney at Law, for Appellee.