IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 11, 2007 Session

BOGDAN RENTEA v. BEN M. ROSE et al.

Appeal from the Chancery Court for Davidson County
No. 05-2565-III Ellen Hobbs Lyle, Chancellor

No. M2006-02076-COA-R3-CV - Filed April 25, 2008

This is an appeal of summary judgment in a lawsuit that arose from a heated discovery dispute. Plaintiff-attorney appeals the grant of summary judgment in favor of Defendants on claims of abuse of process, fraudulent concealment, and outrageous conduct against the attorneys and law firm representing the plaintiff-attorney's former corporate client in a separate lawsuit. Finding no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and SHARON G. LEE, J., joined.

Bogdan Rentea, Austin, Texas, Pro Se.

Winston S. Evans, Nashville, Tennessee, for the appellees, Ben M. Rose, C. Bennett Harrison, Jr., and Cornelius & Collins, LLP.

OPINION

I. FACTUAL BACKGROUND

The case on appeal arose from an underlying lawsuit (hereinafter referred to as the "Tennessee Litigation") in which a corporation, Prime, Inc., sued its former attorney, Bogdan Rentea, and others on January 24, 2005.[1] On February 1, 2005, Mr. Rentea filed a separate

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[1]Prime, Inc. sued B & R Consulting, Ray Crocker, Susan Crocker, and Bogdan Rentea alleging breach of contract, conversion, fraudulent conversion, breach of fiduciary duties, civil conspiracy, professional negligence, and fraudulent concealment.

lawsuit (hereinafter referred to as the "Texas Litigation") against Prime, Inc.[2] Both the Tennessee Litigation and the Texas Litigation were settled December 15, 2005.

Before the settlement in the underlying litigation was reached, Mr. Rentea sued Cornelius & Collins, LLP, the law firm that represented Prime, Inc. in the Tennessee Litigation, and two of its attorneys, Ben M. Rose and C. Bennett Harrison, individually (defendants are collectively referred to as "Cornelius & Collins") on October 13, 2005. Mr. Rentea asserted causes of action for abuse of process, fraud by concealment, and outrageous conduct allegedly resulting from Cornelius & Collins's action(s) during discovery in the Tennessee and Texas Litigation.[3]

The initial discovery dispute centered on a letter from Prime, Inc. concerning the termination of the contract at issue in the Tennessee Litigation. Of particular relevance was the date the letter was drafted.[4] In an effort to show what date the letter was actually drafted versus the date appearing on the letter itself, Prime, Inc. accessed the document's data properties from the computer on which it was created and generated what the parties refer to as the "Properties Sheet." Prime, Inc. sent the Properties Sheet to Cornelius & Collins via facsimile and mailed a copy to the law firm. Before filing the Properties Sheet with the court in support of an affidavit of George Billings, Prime, Inc.'s president, Mr. Rose redacted the transmittal information, i.e., the sender's fax number and date and time of transmission, by crossing through it with a black marker. Mr. Rose also redacted file names appearing or partially appearing in the background of the Properties Sheet using the same black markings.

Mr. Rentea challenged the redactions and was eventually granted the right to conduct discovery on the computer used to draft the letter. It was later discovered that the computer had been reformatted and all data, whether relevant or irrelevant, had been erased. As a result, the court ordered monetary sanctions and imposed a non-rebuttable inference against Prime, Inc. as a sanction for the erasure of the documents and data.[5] According to Mr. Rentea, Mr. Rose made or allowed Mr. Harrison to make certain claims or representations regarding the redactions at hearings and a deposition which were untrue or misleading; these acts and/or omissions form the basis for his claims of abuse of process, fraudulent concealment, and outrageous conduct.

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[2]Bogdan Rentea sued Prime, Inc. and Gary Finn; the complaint in this matter does not appear in the record but the filing of the lawsuit is an undisputed material fact. This action is separate from Mr. Rentea's counterclaim in the Tennessee Litigation.

[3]Mr. Rentea filed his First Amended Complaint on December 21, 2005. Because this is the pleading against which Cornelius & Collins moved for summary judgment, we refer to it as "the complaint."

[4]Evidence in the Tennessee Litigation that the letter was dated December 18, 2003 contradicted evidence in the Texas Litigation that the letter was dated November 18, 2003.

[5]Pursuant to Tenn. R. Civ. P. 37.02, the court found as a non-rebuttable inference that the defendants were not given timely notice of the termination or opportunity to cure any alleged deficiencies as required by the contract with Prime, Inc. and found as fact that the letter was generated on November 18, 2003 and sent to defendants December 18, 2003. These findings were deemed appropriate by the court "because the evidence, which might otherwise show when the Termination Letter was generated, has been destroyed."

After the settlement of the underlying actions, Cornelius & Collins filed a motion for summary judgment in the instant action on January 27, 2006. Mr. Rentea filed a response to Cornelius & Collins's motion for summary judgment and his own motion for partial summary judgment on March 3, 2006.[6] At a status conference, the court ordered a stay of Mr. Rentea's motion for partial summary judgment and all discovery matters pending the outcome of Cornelius & Collins's summary judgment motion, which was heard on July 10, 2006.[7] After review of the record, briefs and arguments of counsel, the court granted summary judgment in favor of Cornelius & Collins.[8] In its order, the court made a thorough statement of the legal grounds supporting summary judgment. Mr. Rentea's complaint was dismissed with prejudice and without leave to amend. Mr. Rentea appeals the grant of summary judgment, the stay of discovery, and the denial of leave to amend citing numerous assignments of error discussed in detail below.[9] Cornelius & Collins seek damages for a frivolous appeal.

II. STANDARD OF REVIEW

Our task on appeal is to review the record to determine whether the requirements for granting summary judgment have been met. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). Summary judgment is appropriate only when the moving party demonstrates that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993).

However, not all factual disputes will prevent granting summary judgment. "In order to render a summary judgment improper, the disputed facts must bear directly and materially upon the legal elements of the claim or defense being tested by the summary judgment motion." *Walker v. First State Bank*, 849 S.W.2d 337, 340 (Tenn. Ct. App. 1992) (citing *Macon County Livestock Mkt., Inc. v. Kentucky State Bank*, 724 S.W.2d 343 (Tenn. Ct. App. 1986)). Once the moving party has shown that there is no genuine issue of material fact, the nonmoving party must then demonstrate the contrary; if the moving party's motion is properly supported, the nonmoving party may not rest upon the mere allegations or denials of his pleading, but must respond setting forth specific facts showing that there is a genuine issue for trial. Tenn. R. Civ. P. 56.06; *Byrd*, 847 S.W.2d at 210.

We review a trial court's grant or denial of summary judgment with no presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). Upon review, we view all the evidence in a light most favorable to the nonmoving party

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[6]Neither party's memorandum of law in support of summary judgment is included in the record.

[7]The hearing was originally set for March 10, 2006. However, the Chancellor entered an order of recusal on March 7, 2006 directing Cornelius & Collins to redocket the motion for summary judgment once the case was reassigned. By order of the Supreme Court, the honorable Allen W. Wallace, Senior Judge, was assigned to hear the case. The substitution caused the delay in hearing Cornelius & Collins' motion for summary judgment.

[8]No transcript of the hearing or statement of the evidence was filed in the record on appeal. *See* Tenn. R. App. P. 24(d).

[9]Mr. Rentea does not appeal summary judgment as to his claim for outrageous conduct.

and resolve all factual inferences in favor of the nonmoving party. *Byrd*, 847 S.W.2d at 210; *Walker*, 849 S.W.2d at 340.

III. ANALYSIS

At the outset, we note Mr. Rentea states on appeal that all the factual allegations as set forth in his complaint are, as a matter of law, to be admitted and taken as true because Cornelius & Collins did not file an answer before moving for summary judgment. This is an incorrect statement of the law. A party may move for summary judgment at any stage in the pretrial process. Tenn. R. Civ. P. 56.02. Likewise, Mr. Rentea is mistaken in his belief that the facts set forth in his amended statement of material facts filed in support of his motion for partial summary judgment are to be admitted and taken as true because Cornelius & Collins did not respond to those facts before their motion was heard. Mr. Rentea filed a voluminous "First Amended Response to Defendants' Statement of Material Facts and First Amended Statement of Material Facts as to Which There is No Genuine Dispute" on July 3, 2006. While Cornelius & Collins would be required to respond in opposition to Mr. Rentea's statement of facts as to his motion for partial summary judgment pursuant to Tenn. R. Civ. P. 56.03, they, as the moving party for the summary judgment under review, are not required to respond to Mr. Rentea's response.

A. Abuse of Process

We first address Mr. Rentea's assignments of error to the grant of summary judgment on his claim for abuse of process. The basis for Cornelius & Collins's alleged liability for abuse of process is set forth in Mr. Rentea's complaint as follows:

> (a) Destroying evidence by redacting information received from their client, without retaining an unredacted version[;]
>
> (b) Concealing evidence for months and failing to disclose it in response to discovery requests[;]
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> (c) Making claims of privilege, where no such claims could be, in good faith, asserted[;]
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> (d) Failing to disclosed [sic] to the Court and therefore to Rentea, facts they had a duty and obligation to disclose[;]
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> (e) Failing to disclose in discovery, facts in their possession, which they had a duty to disclose, and knew were responsive[;]
>
> (f) Filed at least on [sic] motion which was so contrary to local practice that it was summarily dismissed by the Court[;]
>
> (g) Continuing to assert claims contrary to their client's own sworn statements.

Mr. Rentea believes the redactions to the Properties Sheet constituted the destruction of evidence and the failure to include certain discovery responses was an abuse of the pretrial process, intended to "weaken Rentea's resolve to continue his fight and damage him financially." We find Mr. Rentea's arguments to be without merit.

An abuse of process is the use of process to obtain a result which the process was not intended by law to effect, namely, the use of process for a wrongful purpose. *Donaldson v. Donaldson*, 557 S.W.2d 60, 62 (Tenn. 1977); *Deposit Recovery Corp. v. Santini*, 765 S.W.2d 764, 770 (Tenn. Ct. App. 1988). The basis to assert a cause of action for an abuse of process "is not commencing an action or causing process to issue without justification, but misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish." *Givens v. Millikin*, 75 S.W.3d 383, 400 (Tenn. 2002) (quoting *Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsberg, P.A.*, 986 S.W.2d 550, 555 (Tenn. 1999)). Thus, in order to recover for abuse of process, a plaintiff must establish "(1) the existence of an ulterior motive; and (2) an act in the use of process other than such as would be proper in the regular prosecution of the charge." *Id*.

"Ordinarily, the lawful use of a court's process does not give rise to an abuse of process claim, and no claim of abuse will be heard if process is used for its lawful purpose, even though it is accompanied with an incidental spiteful motive or awareness that the use of process will result in increased burdens and expenses to the other party." *Givens*, 75 S.W.3d at 401. Our Supreme Court held that "abuse of process in the civil discovery context may lie when (1) the party who employs the process of a court specifically and primarily intends to increase the burden and expense of litigation to the other side; and (2) the use of that process cannot otherwise be said to be for the 'legitimate or reasonably justifiable purposes of advancing [the party's] interests in the ongoing litigation.'" *Id*. at 402 (quoting *Nienstedt v. Wetzel*, 651 P.2d 876, 882 (Ariz. Ct. App. 1982)).

There is no evidence to support Mr. Rentea's interpretation of Cornelius & Collins's supposed motives and no evidence there was a use of process sufficient to sustain the cause of action. It is not simply that any form of legal process, i.e., the filing of a motion or document with the court, is automatically considered process in the context of a claim for abuse of process; process in this form is used in the litigation of any matter. Within the context of tortious abuse of process, process refers to times when the authority of the court is used. *See Jones ex rel. Adams v. Shelby County, Tenn.*, No. 02-2560-D, 2003 WL 23924841, *2 (W.D. Tenn. Sept. 19, 2003) (quoting 1 Am. Jur. 2d Abuse of Process § 2 (2003)) (defining process as that which emanates from or rests upon court authority constituting a demand of action or restraint). Upon review of the record before us, we find no such improper use of the court's authority. Mr. Rentea identifies only one allegedly improper motion filed with the court; most other claims center on his objection to discovery responses. The appropriate remedy for a party's failure to cooperate in discovery, which includes giving evasive or incomplete answers to discovery requests, is to file a Rule 37 motion for sanctions. Tenn. R. Civ. P. 37.01. The motion cited was a motion to postpone a hearing which the court did not entertain. Thus the authority of the court was not employed for any purpose.

Mr. Rentea's reliance on *Givens v. Mullikin* is misplaced. The *Givens* court found that the plaintiff stated a claim for abuse of process in a personal injury action by allegations that the defendant-law firm, after substituting counsel, essentially restarted discovery, served an excessive number of interrogatories, totaling about 237 questions and subparts, often requested information already in its possession, deposed the plaintiff for a second time, and issued over 70 discovery subpoenas, some unrelated to the case. *Givens*, 75 S.W.3d at 391, 403. Cornelius & Collins's filing a motion in violation of the local court rules is not equivalent to the defendant-firm's use of process in *Givens* and does not evince an ulterior motive and intent to increase the burden and expense of litigation to Mr. Rentea.

The trial court aptly explained the reasons for its grant of summary judgment as to the abuse of process claim as follows:

> A claim for abuse of process requires a use of process. Rentea has not alleged a use of process and there is no evidence in the record of any such use of process. For this reason alone, the claim for abuse of process must be dismissed. In fact, the complaint fails to state a claim for abuse of process.
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> A claim for abuse of process also requires that the plaintiff allege and prove that the defendant[s] have used the process of a court with the specific and primary intent of increasing the burden and expense of litigation to the other side. *Givens v. Mullikin*, 75 S.W.3d 383, 402 (Tenn. 2002). There is no allegation that this was [the] specific and primary intent of Cornelius & Collins' alleged conduct. For this reason alone, the Complaint fails to state a claim for abuse of process.
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> Any damages which Rentea might recover under an abuse of process claim in this case could and should have been recovered in the underlying litigation between Prime, Inc. and Rentea.

We concur with this reasoning. The trial court did not ignore Mr. Rentea's "universe of facts" as he argues, but rather upheld the well-settled standards of summary judgment and considered only supported facts. Rule 56.06 does not permit Mr. Rentea, as the nonmoving party, to rely on the unsworn facts contained in his complaint once Cornelius & Collins presented evidence they were entitled to judgment and the burden shifted. *See Wallace v. Nat'l Bank of Commerce*, 938 S.W.2d 684, 689 (Tenn. 1996); *Byrd*, 847 S.W.2d at 211. Even taking the facts alleged in his complaint as true, we conclude that Mr. Rentea's complaint fails to state a claim for abuse of process. We, therefore, affirm the grant of summary judgment in favor of Cornelius & Collins as to the claim for tortious abuse of process.

B. Fraudulent Concealment

Mr. Rentea next argues the trial court erred in granting summary judgment on the claim for fraudulent concealment. He asserts that Cornelius & Collins concealed non-privileged information and destroyed evidence which they had a duty to disclose.

It is undisputed that Mr. Rose made the redactions to the Properties Sheet using black markings which were visible to all. Instead, Mr. Rentea focuses on the fact that the facsimile transmission information was redacted without Prime, Inc.'s permission and contends it was an alteration of the affidavit and accompanying Properties Sheet filed with the court. He further asserts the concealment occurred by Cornelius & Collins's failure to retain an unredacted copy of the Properties Sheet. However, the facsimile transmission information was never part of the information Prime, Inc. intended to convey. Prime, Inc. intended to send Cornelius & Collins the information contained in the Properties Sheet. This is evidenced by the copy of the Properties Sheet that Prime, Inc. sent through the U.S. postal system at the same time it sent the Properties Sheet via fax. Cornelius & Collins retained the unredacted Properties Sheet that was mailed to them, which showed the file names and was without the fax transmission information, and produced a copy to Mr. Rentea on September 30, 2005.[13]

Additionally, Mr. Rentea points to Mr. Rose's silence at the hearings as a basis for his claim. However, as a general rule, there must be more than mere silence to constitute fraudulent concealment or suppression of the truth, or a mere failure to disclose known facts; there must be a concealment, and the silence must amount to fraud. *Gurley v. Hickory Withe Partners, L.P.*, No. W2002-02050-COA-R3-CV, 2003 WL 22204520, *4 (Tenn. Ct. App. Sept. 10, 2003) (quoting *Hall v. DeSaussure*, 297 S.W.2d 81, 87 (Tenn. Ct. App. 1956)). Concealment "may consist [of] withholding information asked for, or in making use of some device to mislead, thus involving *act and intention*." *Gurley*, 2003 WL 22204520 at *4 (quoting *Hall*, 297 S.W.2d at 87) (emphasis added). We do not find sufficient evidence to suggest Cornelius & Collins intended to mislead the court or the other parties. Mr. Rentea thus failed to demonstrate a genuine issue of material fact existed on his claim of fraudulent concealment.

Again, the trial court made a thorough statement of the parties' positions and explanation of the reasons for which summary judgment was granted on the claim for fraudulent concealment. Because we find no error in the analysis after review of the record, we quote and affirm the order of the court:

> The claim for fraudulent concealment must be dismissed because nothing was concealed. Rentea's claim for fraudulent concealment seems to be based partly upon the allegation that Cornelius & Collins redacted part of a document in the underlying litigation. It is true that the redactions were made. However, the redactions were made with a black marker and were plainly visible so that everyone concerned was aware of the redactions. Indeed, Rentea admitted at his deposition in the underlying litigation that he knew redactions had been made and that he understood the reason for making at least one of the redactions.
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[13]Mr. Rentea states that the "fax transmittal information which Rose permanently redacted was vital . . . in the underlying case because (1) it established whom had [sic] transmitted the screen shot showing the 'Properties Sheet' and (2) when the screen shot was made. By the time Defendants gave me the information, their clients had wiped clean the hard drive." Whatever injury Mr. Rentea sustained as a result of the delay in receiving the information was redressed by the imposition of sanctions against Prime, Inc.

> Next, Rentea contends that Ben Rose committed an act of fraudulent concealment at the hearing on May 2, 2005 when the Chancellor inquired of Mr. Harrison regarding the reason for the redaction at the top of the document. Mr. Harrison responded that he had not known until the hearing that the redaction was an issue but that he would investigate and [sic] to learn the reason for the redaction. The Chancellor then responded that Mr. Harrison's answer of "I don't know" was sufficient since this was the first time that the redaction had been an issue. Rentea contends that Mr. Rose nevertheless had a duty to advise the Chancellor of the reason why he had made the redaction. The Court disagrees. Under these circumstances, Mr. Rose had no duty to speak. Furthermore, Rentea knew that an [sic] it was a fax legend which had been redacted. . . . Because Rentea admittedly knew that it was the facsimile transmission stamp which had been redacted, nothing was concealed from him. If Rentea wanted the redacted facsimile transmission stamp to be revealed to him, his remedy was to file a motion to compel, not to file a separate lawsuit against Cornelius & Collins.
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> Rentea next contends that Harrison made a misrepresentation at the hearing on September 9, 2005. In support of that contention, Rentea has submitted two pages from the transcript of that hearing. . . .However, it appears to the Court from those pages of the transcript that Harrison was responding to an inquiry from the Chancellor which concerned only the redaction of the facsimile transmission legend, not both of the redactions. Furthermore, nothing was concealed because Rentea had long since known that there were two redactions on the document and that only one of the redactions was the facsimile transmission stamp. Rentea also admitted that he understood the reason of the other redaction.

We likewise find no error in the trial court's holding and assessment of Mr. Rentea's allegations of improper claims of privilege by Cornelius & Collins:

> Finally, Rentea complains that Cornelius & Collins made bogus claims of attorney-client privilege during a deposition in the underlying litigation. However, asserting claims of attorney-client privilege, even if done in bad faith, is not fraudulent concealment. If a party believes that a claim of attorney-client privilege has been made in bad faith, his remedy is to file a motion to compel and to seek sanctions pursuant to Rule 37, T.R.C.P. His remedy is not to file a separate lawsuit asserting a claim of fraudulent concealment.

The Tennessee Rules of Civil Procedure provide a remedy for making improper representations to the court in pleadings, written motions, or other papers filed with the court: the imposition of sanctions against the offending party. Tenn. R. Civ. P. 11.02-.03. Indeed, Mr. Rentea filed a motion for sanctions against Cornelius & Collins in the underlying litigation for the same conduct alleged in the case before us. However, Mr. Rentea entered into a settlement

agreement while his motion was still pending.[14] He now contends his only available remedy against Cornelius & Collins was to file the action under review because his motion for sanctions and complaints were not heard. A settlement agreement is merely a contract between the parties, governed by the rules and principles of contract law, *Sweeten v. Trade Envelopes, Inc.*, 938 S.W.2d 383, 385 (Tenn. 1996), and, absent evidence to the contrary, Mr. Rentea assented to the terms of the settlement and the relief it provided. Mr. Rentea may not now complain of the practical effect or attempt to circumvent the legal effect of this bargained-for exchange. If he wanted relief against Cornelius & Collins, Mr. Rentea should have had the sanctions motion heard before he agreed to the settlement.

C. Stay of Discovery

Mr. Rentea challenges the trial court's July 12th order staying all discovery matters pending the outcome of Cornelius & Collins's motion for summary judgment. Mr. Rentea claims the order denied him "the opportunity to conduct *any* discovery" and to set a hearing on his motion. However, the order did not deny him these opportunities as he claims; it simply stayed further discovery until the disposition of Cornelius & Collins's motion for summary judgment. Trial courts have wide discretion on discovery matters. *Strickland v. Strickland*, 618 S.W.2d 496, 501 (Tenn. Ct. App. 1981). According to the Supreme Court, "[a] trial court abuses its discretion only when it applies an incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining." *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (internal quotations omitted).

Mr. Rentea suffered no injustice by the stay of discovery. As Cornelius & Collins point out, Mr. Rentea had conducted enough discovery with respect to his claims to enable him to file a response to Cornelius & Collins's motion for summary judgment as well as to file his own motion for partial summary judgment. The relevant facts were known to the parties. The court was well within its discretion to stay additional discovery and, furthermore, to prevent unnecessary expense in the event the case was dismissed. As such, we find no error in the trial court's decision to stay discovery pending determination of summary judgment.

D. Amendment of Complaint

We next address Mr. Rentea's assignment of error to the court's denial of his request to amend his complaint. The final paragraph of Mr. Rentea's motion for partial summary judgment and response in opposition of summary judgment requested leave to amend the complaint "should [the court] find that there are any technical pleading deficiencies." This motion was filed on March 3, 2006, months before the hearing on summary judgment. Mr. Rentea had previously amended his complaint on December 21, 2005. Under the circumstances of this case, Mr. Rentea would have been permitted to amend his complaint only with the written consent of Cornelius & Collins or by leave of the court which is to be given freely when required by justice. Tenn. R. Civ. P. 15.01.

[14] The settlement agreement(s) in the Tennessee and Texas Litigation do not appear in the record on appeal.

In our opinion, the court did not err in denying Mr. Rentea's blanket, preemptive request to amend. The denial of a motion to amend the pleadings is within the sound discretion of the trial court and will not be disturbed on appeal absent showing an abuse of discretion. *Hawkins v. Hart*, 86 S.W.3d 522, 532 (Tenn. Ct. App. 2001). "It is not an abuse of discretion to deny a motion to amend where the grant of the motion would be futile." *Forsythe v. Gibbs*, No. M2001-02055-COA-R3-CV, 2002 WL 1869415, *5 (Tenn. Ct. App. Aug. 15, 2002). Mr. Rentea suggests the trial court granted summary judgment on the claimed abuse of process because he "did not use certain magic words in his [c]omplaint." Specifically, the complaint did not allege and Mr. Rentea did not provide evidence suggesting Cornelius & Collins acted or in any way used the authority of the court with the *primary intent* to increase the burden of litigation on Mr. Rentea. The complaint did contain an unsupported allegation of Cornelius & Collins's attempt to damage Mr. Rentea financially. However, allowing an amendment for Mr. Rentea to change the wording of his complaint will not cure the absence of genuine issues of material fact. The trial court did not abuse its discretion.

E. Frivolous Appeal

Lastly, we consider whether it is appropriate to grant Cornelius & Collins's request for damages for a frivolous appeal. "When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may. . . award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal." Tenn. Code Ann. § 27-1-122. An appeal is considered frivolous when it appears the appellant has no reasonable chance of success. *Liberty Mut. Ins. Co. v. Taylor*, 590 S.W.2d 920, 922 (Tenn. Ct. App. 1979).

We are persuaded that Mr. Rentea's appeal was frivolous and, in our opinion, had no reasonable chance of success. Mr. Rentea presented no persuasive argument or colorable claim of error on appeal. Furthermore, he repeatedly made incorrect statements of the law, generally included no citations to the law in support of his argument, and did not appear to help clarify his assertions at the oral argument he requested. We, therefore, remand to the trial court for determination of appropriate damages consisting of Cornelius & Collins's attorney's fees and reasonable expenses incident to the appeal.

IV. Conclusion

This is a lawsuit over the conduct of litigation. The litigation that gave rise to this lawsuit was obviously contentious. The rules of procedure generally provide the proper vehicle for pursuing claims of misconduct against opposing counsel during the course of litigation. *See* Tenn. R. Civ. P. 11.02-.03 (Misrepresentations to the Court); 34A.02 (Spoliation of Evidence); 37.01(4) (Expenses incurred in successful Motion to Compel Discovery); 41.02 (Involuntary Dismissal); and 54.04 (Costs). The invocation of the rules of procedure regarding the conduct of opposing counsel arising in the course of litigation should be the primary method of seeking redress, not the initiation of yet another lawsuit involving the causes of action alleged herein.

The judgment of the trial court is affirmed in all respects and remanded for further

proceedings consistent with this opinion. Costs of this appeal are assessed against the appellant Bogdan Rentea for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE