IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DENNIS AND BERNADENE DOCHNAHL, a married couple,	)	NO. 63211-6-I
Appellants,	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
INEZ SOMERVILLE PETERSEN, a single person,	)	
Respondent.	)	FILED: January 11, 2010

Leach, J .— If a complaint lacks a factual or legal basis, the trial court may impose CR 11 sanctions if it finds the attorney who signed and filed the complaint failed to conduct a reasonable inquiry into the factual and legal bases of the claims. Robert Green, counsel for plaintiffs Dennis and Bernadene Dochnahl, appeals the orders imposing sanctions against him under CR 11 and denying reconsideration. We affirm the award in all respects.

FACTS

This litigation arises from conflict between individuals active in city politics in Renton, Washington. In May 2007, Dennis and Bernadene Dochnahl filed a complaint against Inez Petersen, alleging claims for libel and slander, defamation, invasion of privacy, intentional infliction of emotional distress, and

negligent infliction of emotional distress. Attorney Robert Green of Hadley Green PLLC signed the complaint. The Dochnahls alleged that on multiple occasions Petersen made verbal and written personal attacks against them, including letters to the editor and commentary on the Internet. In June 2007 attorney Peter Buck filed a notice of appearance for Petersen. Green filed an amended complaint changing the caption.

On July 10, 2007, Petersen answered the complaint, denying all claims and seeking an award of attorney fees and costs under RCW 4.84.030. Buck investigated the facts based on the allegations in the complaint and, on August 2, 2007, gave Green notice of intent to seek CR 11 sanctions. Buck took the position that Green had not performed a reasonable inquiry into the merits of the Dochnahls' claims, that the claims were not grounded in fact or warranted by existing law, and that the claims may have been interposed for the improper purpose of preventing Petersen from participating in the political process.

On August 13, 2007, Buck deposed Bernadette Dochnahl, who was unable to articulate any damages she had suffered or identify any statements Petersen allegedly made that formed the basis of the complaint. Dochnahl testified that she had received no medical diagnosis or treatment for the emotional injuries she allegedly suffered and that she was unaware of any actual damages to her reputation, but feared there might be some. Dochnahl acknowledged that Petersen made no defamatory oral statements and that

Petersen's written statements were opinions. Immediately following the deposition, Buck orally raised the possibility of seeking CR 11 sanctions. Two weeks later Buck raised the issue again in an e-mail.

In September 2007, Green filed a second amended complaint, purportedly to clarify the Dochnahls' claims. The amended complaint again alleged claims for libel and slander, defamation, invasion of privacy–false light, and intentional and negligent infliction of emotional distress. The amended complaint made only minor modifications to the alleged factual basis for the claims. But despite the CR 11 notice and Bernadette Dochnahl's deposition, the complaint again alleged claims based on oral statements and emotional distress.

During the same period, the Dochnahls answered Petersen's first interrogatories, objecting to most of the interrogatories as overly broad. They never answered interrogatories that asked them to specify the false parts of Petersen's alleged defamatory statements and to provide details of any alleged financial and non-financial loss, emotional distress suffered, or treatment received.

In October 2007, Buck withdrew as Petersen's counsel and insurance counsel, Davies Pearson, substituted. There was little activity during the remainder of 2007. In early 2008, Davies Pearson informed the Dochnahls that their lawsuit was frivolous.

In January 2008, the Dochnahls filed a motion to compel Petersen to turn

over her personal computer and other electronic storage devices. The motion was hotly contested over a period of months. When Petersen left to attend school late in the summer, she left her laptop computer in Washington to be turned over to a forensic expert.

On August 8, 2008, Petersen filed a motion for summary judgment seeking dismissal of all the Dochnahls' claims with prejudice and an award of attorney fees and costs as a sanction under CR 11. Shortly thereafter, the Dochnahls sought and were granted a voluntary dismissal.

In September 2008, Buck filed a notice of association and reappeared for Petersen, filing a motion for attorney fees under RCW 4.84.185 and for sanctions under CR 11. Buck sought $60,472.92, approximately $25,000 less than the amount he actually incurred. Insurance defense counsel also requested the attorney fees it incurred in the amount of $13,854.35. Green opposed the motion, arguing that he had good reason to believe the Dochnahls' claims were well grounded in fact and warranted by existing law.

The trial court awarded Petersen sanctions of $75,166.53 against Green under CR 11 ($60,472.92 fees and costs incurred by Buck, $13,854.35 fees incurred by Davies Pearson, and $839.26 incurred by Petersen in replacing her laptop computer).

Green moved for reconsideration, arguing that sanctions were not warranted; that any modest award of sanctions should have been imposed

against his former partner, Jerrilynn Hadley, who conducted the investigation prior to Green filing the complaint; that the amount of fees was excessive, and that "had defense counsel filed a CR 11 motion in September 2007, when he threatened to, this matter would have been resolved and would have involved $2,500.00 in claimed sanctions at most." Green filed Hadley's declaration in which she described the review of the facts and law she conducted before drafting the complaint.

The trial court denied reconsideration and entered detailed findings in support of the order: Green signed the complaint and signed and filed the second amended complaint despite Bernadette Dochnahl's self-defeating deposition testimony; the Dochnahls never answered interrogatories regarding the basis of their claims; Hadley's declaration did not detail the documents or statements she reviewed, and although Hadley stated the Dochnahls incurred attorney fees, the Dochnahls did not allege any damages they incurred as a result of Petersen's writings; Petersen's single written statement that arguably could have been defamatory was an unflattering opinion meant to poke fun or ridicule; the Dochnahls did not have the required medical testimony supporting their claims for negligent infliction of emotional distress; they did not attempt to identify any statements Petersen made that could be proven false; they had notice Petersen would seek CR 11 sanctions as early as summer 2007; Green filed the second amended complaint leaving the Dochnahls' claims intact after

discovery revealed there was no arguable basis for a complaint based on oral statements or negligent infliction of emotional distress; the only apparent reason for the Dochnahl's lawsuit was harassement; it was Green's responsibility to inform them that while Petersen's statements were annoying, they were not actionable; and Green failed to make a reasonable inquiry into the facts or law.

Regarding the amount of attorney fees, the court found that Green did not argue Petersen's attorney fees were excessive until the motion for reconsideration, the fees were not excessive, and Petersen did not unnecessarily prolong the litigation. The court imposed the sanctions against Green as the attorney who signed all the pleadings and declined to address the issue of Hadley's responsibility.

Green appeals.

ANALYSIS

CR 11 requires attorneys to date and sign all pleadings, motions, and legal memoranda. This signature constitutes the attorney's certification that the attorney

> has read the pleading, motion, or legal memorandum, and that to the best of the . . . attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) [the pleading, motion or memorandum] is well grounded in fact; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . .

CR 11 continues,

> If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion, . . . may impose upon the person who signed it . . . an appropriate sanction, which may include an order to pay to the other party . . . the amount of the reasonable expenses incurred because of the filing, . . . including a reasonable attorney fee.

The purpose of the rule is to deter baseless filings and frivolous pleadings.[1] Courts employ an objective standard in evaluating an attorney's conduct and test the appropriate level of prefiling investigation by inquiring what was reasonable to believe at the time the pleading was filed.[2] Prompt notice of the possibility of sanctions fulfills the primary purpose of deterring litigation abuses.[3] Thus, an attorney who perceives a possible violation of CR 11 should bring it to the attention of the offending party as soon as possible.[4] The better practice is to inform counsel specifically of the nature of the violation and the possibility of CR 11 sanctions, but general notice that sanctions are contemplated is sufficient.[5] The violation of CR 11 occurs upon the filing of the offending pleading; hence, an amendment or withdrawal of the pleading or a voluntary dismissal of the suit does not expunge the violation, although it may mitigate the sanction.[6] In

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[1] Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 220, 829 P.2d 1099 (1992).

[2] Biggs v. Vail, 124 Wn.2d 193,197, 876 P.2d 448 (1994); Bryant, 119 Wn.2d at 220; Miller v. Badgley, 51 Wn. App. 285, 299-300, 753 P.2d 530 (1988) (after 1985 amendment to CR 11, rule now imposes an objective rather than subjective standard of reasonableness).

[3] N. Coast Elec. Co. v. Selig, 136 Wn. App. 636, 649, 151 P.3d 211 (2007).

[4] Biggs, 124 Wn.2d at 198; N. Coast Elec., 136 Wn. App. at 649 (party should move for CR 11 sanctions as soon as it becomes aware they are warranted).

[5] Biggs, 124 Wn.2d at 199.

[6] Biggs, 124 Wn.2d at 199-200.

imposing sanctions for filing a complaint that lacks a factual or legal basis, the trial court must make findings specifying the actionable conduct.[7]

This court reviews an award of sanctions under CR 11 for an abuse of discretion.[8] Whether or not a reasonable inquiry was made depends on the circumstances of a particular case. The trial court knows the tenor of the litigation and is in the best position to determine whether facts exist to impose sanctions.[9]

Green does not challenge the amount of the sanctions. Instead he contends that the imposition of sanctions was improper because Petersen delayed filing a motion for CR 11 sanctions, knowingly tolerating Green's CR 11 violations for over a year, and then seeking to punish Green at the conclusion of the case. Green contends that Petersen's "abuse of process" is a complete bar to CR 11 sanctions. For the same reasons, Green contends that Petersen's failure to mitigate was egregious and also bars recovery of sanctions.

Green's arguments fail. The trial court carefully considered the record and entered detailed findings supporting the award of sanctions. Green has not assigned error to the court's findings; they are verities on appeal.[10] The

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[7] N. Coast Elec., 136 Wn. App. at 649. .

[8] Biggs, 124 Wn.2d at 197; Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp, 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993).

[9] Miller, 51 Wn. App. at 300-01.

[10] Robel v. Roundup Corp., 148 Wn.2d 35, 42, 59 P.3d 611 (2002); Harrington v. Pailthorp, 67 Wn. App. 901, 911, 841 P.2d 1258 (1992) (unchallenged findings of fact in support of sanctions award are verities on appeal).

Dochnahls filed their complaint in May 2007. Two months later, when Petersen filed her answer, she requested attorney fees under RCW 4.84.185 and CR 11. Green concedes that in Bernadette's deposition a few months later, she did not identify any false statements by Petersen and was unable to credibly identify any specific damages she suffered as a result of Petersen's alleged defamatory statements. Thereafter, Buck twice informally notified Green of the possibility of seeking CR 11 sanctions and then filed a notice of CR 11 sanctions. Green did not heed the warning and in September 2007 filed a second amended complaint alleging the same claims despite the absence of any basis for them.

Green also contends that sanctions are barred because after Buck withdrew, insurance defense counsel did not separately give notice of intent to seek CR 11 sanctions, citing MacDonald v. Korum Ford.[11] Green concedes that MacDonald does not state a hard and fast rule that substitute counsel must give independent notice of intent to seek sanctions, but he argues that the court in fact imposed such a rule and that it must be imposed here as well. In his reply brief Green contends that all sanctions incurred after Buck withdrew in October 2007 must be vacated because Buck's actions and omissions vitiated the effectiveness of the original CR 11 sanctions and induced Green to rely on the impression that Petersen did not intend to seek sanctions.

[11] 80 Wn. App. 877, 912 P.2d 1052 (1996).

In MacDonald, the plaintiff filed a complaint in August 1990. A year later, plaintiff's deposition severely undermined the factual bases of her claims. The plaintiff continued to prosecute her case and filed a motion to amend her complaint, and the defendant responded with notice of intent to seek CR 11 sanctions if plaintiff proceeded with the motion. Plaintiff withdrew the motion to amend. Another year later, a second attorney took over the case and began preparing for trial. In April 1993, defendant moved for summary judgment and for sanctions. The trial court awarded sanctions equal to the entire amount the defendant expended.[12] On appeal the court affirmed an award of sanctions but remanded for recalculation for two reasons. First, the award was not limited to those amounts the second attorney incurred in responding to sanctionable filings.[13] Second, the court noted that the plaintiff withdrew her motion to amend her complaint when the first attorney gave notice of intent to seek CR 11 sanctions. The court reasoned that if the second attorney had similarly notified plaintiff that continued pursuit of the case was actionable, it might have deterred some of the plaintiff's litigation abuse.[14]

MacDonald is distinguishable. Green does not challenge the amount of sanctions imposed. Moreover, Green had ample notice Petersen intended to seek CR 11 sanctions before Buck withdrew in October 2007, and a few months

[12] MacDonald, 80 Wn. App. at 881-82.
[13] MacDonald, 80 Wn. App. at 892-93.
[14] MacDonald, 80 Wn. App. at 893.

later insurance defense counsel informed Green the Dochnahls' complaint was frivolous. Green had not responded to any of Buck's warnings regarding sanctions or Davies Pearson's warning that the case was frivolous. There is no basis to conclude that additional notice would have fared any differently. The trial court found that Green failed to make a reasonable inquiry into the facts and law and that the requested fees included only those incurred in responding to the Dochnahls' frivolous complaint. These findings are unchallenged, but we also conclude they are amply supported by the evidence and other findings.

Finally, Green argues that he is entitled to attorney fees on appeal. There is no basis for an award of attorney fees to Green.

CONCLUSION

Green's arguments turn CR 11 on its head, shifting all responsibility for Green's conduct to opposing counsel. The trial court's award of sanctions against Green was well within its discretion. We affirm the award in all respects.

Because neither counsel for respondent has requested fees on appeal, we award none.

Affirmed.

Leach, J.

WE CONCUR:

Appelwick, J.

Cox, J.