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LAKE CO. CLERK OF COURT

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

BRYAN ANTHONY REO	)	
Plaintiff,	)	CASE NOS. 16 CV 000825
	)	15 CV 001590
vs.	)	
	)	**OPINION AND JUDGMENT ENTRY**
MARTIN LINDSTEDT, et al.	)	
	)	September 25, 2019
Defendants.	)	

This matter is before the court to address plaintiff Bryan Reo's motion for sanctions pursuant to R.C. 2323.51. Reo claims defendant Martin Lindstedt made bad faith denials of written requests for admissions which resulted in Reo having to proceed to a three day trial in which he represented himself. He requests attorney fees for 30 hours at his hourly rate of $300 per hour for a total amount of $9,000. He further claims he suffered lost opportunity to do other paid legal work.

Reo separately filed another motion for $4,200 in attorney fees pursuant to R.C. 2323.51 and Civ.R. 11. The attorney fees were for services of Brett A. Klimkowsky, Esq. who served as attorney of record for Reo from January 23, 2017 to June 1, 2018. Included in Reo's motion for attorney fees, was an affidavit by Klimkowsky outlining his background and experience, time engaged, hourly rate, and hours expended while representing Reo.

In support of his motions, Reo alleges Lindstedt engaged in fraudulent, malicious and vexatious abuse of legal process. Lindstedt did not file briefs in opposition to either of Reo's motions. Reo also filed a reply brief in support of his motions for attorney fees, sanctions and prejudgment interest.

Complicating the issue is the fact that Lindstedt was a pro se litigant who resides in Missouri and is not familiar with Ohio law. There is no evidence Lindstedt has any formal legal training. Reo graduated from law school in 2017 and was admitted to the Ohio bar in May 2018 when he started representing himself as a pro se attorney in the above lawsuits. Prior to the entry of Klimkowsky in January 2017, Reo represented himself as a pro se non-attorney litigant. Case No. 15 CV 001590 started in September 18, 2015 when he filed his complaint and Case No. 16 CV 000825 started in May 13, 2016 when he filed that complaint. Lindstedt responded by filing a counterclaim in both cases.

As a general rule, the prevailing party may not recover attorney fees as costs of litigation in the absence of statutory authority unless the opposing party has acted in bad faith, vexatiously, wantonly, obdurately or for oppressive reasons. *McPhillips v. United States Tennis Assn., Midwest*, 11th Dist No. 2006-L-235, 2007-Ohio-3595, ¶ 20; *Wilborn v. Bank One Corp.*, 121 Ohio St.3d 546, 2009-Ohio-306, 906 N.E.2d 396, ¶ 7. Under R.C. 2323.51, a party and/or their counsel may be sanctioned for the filing of a civil action, the assertion of a claim, defense, or the taking of any other action in connection with a civil action if the conduct serves merely to harass or maliciously injure another party to the civil action or is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or consists of allegations or other factual contentions that have no evidentiary support or are not warranted by the evidence. *McPhillips* at ¶ 27; R.C. 2323.51(A)(1)(a), (A)(2)(a)(i)-(iv). Such conduct constitutes 'frivolous conduct.' *Id.*; R.C. 2323.51(A)(2). Any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with the civil action. R.C. 2323.51(B)(1). *Id.* R.C. 2323.51 is not intended to deter legitimate claims but does further the important public policy goal of deterring lawsuits based on nothing more than personal feelings, opinions and unfounded speculation.

The question of what constitutes frivolous conduct may be either a factual determination, e.g., whether a party engages in conduct to harass or maliciously injure another party, or a legal determination, e.g., whether a claim is warranted under existing law. *McPhillips* at ¶ 28. A party is not frivolous merely because a claim is not well grounded. The test is whether no reasonable lawyer would have brought the action in light of existing law. *Id.* at ¶ 29. A hearing on a motion for sanctions is only required under the statute when the trial court grants the motion. *Id.* at ¶ 32; R.C. 2323.51(B)(2). In the Eleventh District, a trial court is not required to hold a hearing upon every application for attorney fees which is disallowed. *State Farm Ins. Cos. v. Peda*, 11th Dist. No. 2004-L-082, 2005-Ohio-3405, at ¶ 31. A trial court must schedule a hearing only on those motions which demonstrate arguable merit and when a trial court determines there is no basis for the imposition of sanctions, it may deny the motion without a hearing. *McPhillips* at ¶ 33.

Civ.R. 11 additionally provides a mechanism for an award of sanctions for frivolous litigation. Civ.R. 11 requires a willful violation of the rule and applies a subjective bad faith standard. *Omerza v. Bryant & Stratton*, 11th Dist. Lake No. 2006-L-147, 2007-Ohio-5216, ¶ 15. Negligence is insufficient to invoke Civ.R. 11 sanctions. *Riston v. Butler*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, ¶ 9 (1st Dist.); *Kester v. Rodgers*, 11th Dist. Lake Nos. 93-L-

056, 93-L-072, 1994 WL 188918, *4 (May 6, 1994). The party's or attorney's actual intent or belief is consequently relevant to the determination of whether he or she acted willfully.

In determining whether a pro se party's conduct violates Civ.R. 11, the trial court should consider whether the party signing the document: (1) has read the document; (2) harbors good grounds to support the document to the best of the person's knowledge, information, and belief; and (3) did not file the document for purposes of delay. *Bikkani v. Lee* , 8th Dist Cuyahoga No. 89312, 2008-Ohio-3130, ¶ 21. If the pro se party fails to meet one of these requirements and the failure was willful, as opposed to merely negligent, the person may be subject to sanctions, including an award of reasonable attorney fees and expenses incurred by the opposing party bringing a motion under Civ.R. 11. *Id.* In deciding whether a violation was willful, the trial court must apply a subjective bad faith standard. This is in contrast to the objective standard in R.C. 2323.51 in determining frivolous conduct. *Bikkani* at ¶ 22; *Omerza*; *Stevenson v. Bernard*, 11th Dist. Lake No. 2006-L-096, 2007-Ohio-3192, ¶ 41. Therefore a finding of frivolous conduct under R.C. 2323.51 is determined without reference to what the individual knew or believed. *Id.* Thus R.C. 2323.51 is broader in scope than Civ.R. 11. It is well settled that the failure to conduct a reasonable investigation may constitute frivolous conduct under R.C. 2323.51 and a violation of Civ.R. 11. *Stevenson* at ¶ 43; *Crooks v. Consolidated Stores Corp.*, 10th Dist. No. 98 AP-83, 1999 Ohio App. Lexis 350 (Feb. 4, 1999), *9.

Notably, both R.C. 2323.51 and Civ.R. 11 allow for the imposition of sanctions against a pro se litigant. *Bikkani*, at ¶ 29; *Burrell v. Kassicieh*, 128 Ohio App.3d 226, 714 N.E.2d 442 (3rd Dist.1998). Under Ohio law, pro se litigants are held to the same standard as all other litigants. *Id.* They must comply with the rules of procedure and must accept the consequences of their own mistakes. *Id.* The mere fact that a party is pro se does not shield the party from the imposition of sanctions when the party engages in frivolous conduct. *Id.* Indeed, a court's refusal to hold a pro se litigant to the same standard as an attorney who engages in frivolous and egregious conduct would defeat the purpose of R.C. 2323.51 and Civ.R. 11 to deter vexatious and harassing litigation. *Id.* Although R.C. 2323.51, which is broader in scope than Civ.R. 11, should be applied carefully so that legitimate claims are not chilled and parties are not punished for mere misjudgment or tactical error, trial courts nevertheless must have the courage to further the goals of the statute and impose sanctions whenever appropriate. *Id.*

Reo's motion for sanctions pursuant to R.C. 2323.51 is not well taken. As previously mentioned, Reo is requesting attorney fees for 30 hours at his hourly rate of $300 per hour for a total amount of $9,000 for representing himself in a three day trial. He was not representing any other parties. The hourly rate of $300 is high for an attorney in Lake County especially for one

who has practiced law for one year. His motion raises an issue of whether pro se litigants who were also attorneys are entitled to attorney's fees. The law is clear that pro se litigants who are attorneys are not entitled to attorney fees. *State ex rel. Freeman v. Wilkonson*, 64 Ohio St.3d 517, 517, 597 N.E.2d 125 (1982).

In this case, Reo was the only plaintiff and he represented only himself, not others. He initiated the litigation to pursue his own interests. The word "attorney" generally assumes some kind of agency (i.e. an attorney/client relationship). The fees a lawyer might charge himself are not, strictly speaking, "attorney fees." Although he claims he "incurred" these fees, he obviously did not actually collect attorney fees and had no agreement to collect such fees from himself as a client. While Reo claims "lost opportunity" costs, this is no different from non-attorney parties and indeed the jury, who are forced to participate in various hearings and the trial. Finally, in *State ex rel. Freeman*, the Ohio Supreme Court specifically held that recovery of attorney fees under R.C. 2323.51 (which provides for an award of attorney fees as a sanction for frivolous conduct) does not provide for compensation of attorneys acting pro se. The rationale behind such a rule is that an award of attorney fees is intended to reimburse the party for fees they incurred. Reo did not incur attorney fees during the trial. This court finds that this rationale equally applies to Civ.R. 11.

Next at issue is Reo's motion for $4,200 in attorney fees pursuant to R.C. 2323.51 and Civ.R. 11 for the services of Brett A. Klimkowsky, Esq. who served as attorney of record for Reo from January 23, 2017 to June 1, 2018. There is evidence that Reo was working as an intern or law clerk for Klimkowsky during this time period. He was attending law school at the time. As previously mentioned Reo provided an affidavit by Klimkowsky outlining his background and experience, time engaged, hourly rate and hours expended while representing Reo. In his brief, Reo claimed Klimkowsky was inundated with "flagrantly frivolous court filings submitted by Defendant for the sole purpose of harassing Plaintiff" and listed six filings by Lindstedt during the time period of March 2017 through February 2018.

Reo's motion for $4,200 in attorney fees for Klimkowsky is not well taken. The docket shows nine filings by Klimkowsky in Case No. 15 CV 001590 and four filings in Case No.16 CV 000825, many of them duplicates of the filings in the earlier case. One of the filings in each case was a motion to continue due to a conflict with a date in another court. In Case No. 16 CV 000825, Klimkowsky filed one pretrial statement on January 22, 2018. He filed essentially identical pretrial statements in 15 CV 001590 on January 22, 2018, May 25, 2017 and February 9, 2017. All of these were essentially identical to a pretrial statement filed by Reo on September 13, 2016 in Case No. 15 CV 001590. On January 16, 2018, in both cases, Klimkowsky filed a

motion for leave to file a motion for summary judgment against Lindstedt and to file a brief in excess of ten pages. About three weeks later (February 2, 2018), Lindstedt filed a brief in opposition to Reo's latest motion for summary judgment and his own motion for summary judgment. Klimkowsky then filed a reply brief in support of his motion filed on January 16, 2018 and a short brief in opposition to Lindstedt's motion for summary judgment. The filing consisted of a four page brief with five pages of exhibits. This is the only time Klimkowsky responded to a filing by Lindstedt. This does not constitute being overwhelmed by Lindstedt's filings.

Both cases arose when Reo and Lindstedt engaged in highly disparaging comments about each other on various internet sites. The parties had strong personal opinions and as the conflict developed, they became heated opponents. The first case, 15 CV 001590, was filed by Reo on September 18, 2015. There were 48 filing by Reo and 44 filings by Lindstedt. Klimkowsky had 9 filings. The second case, 16 CV 000825, was filed by Reo on May 13, 2016. There were 32 filing by Reo, 26 filings by Lindstedt and 4 filings by Klimkowsky. Reo aggressively pursued the cases and Lindstedt operated in a reactive mode, filing counterclaims and his own motions copying or countering the motions filed by Reo. While many of Lindstedt's filings were rambling and incoherent to the point of being almost incomprehensible, the essence of his claims is that this court had no jurisdiction over him, a Missouri resident, that the statute of limitations had expired on the allegedly defamatory statements made by him on the internet, and that his conflict with Reo was basically over name calling on the internet. He claimed he had a First Amendment right to state his opinions on the internet. Lindstedt did not initiate the lawsuits and fought back the best way he could on his own. As mentioned earlier, Lindstedt was operating in a defensive mode in a foreign jurisdiction.

The court cannot conclude that Lindstedt engaged in behavior designed to unnecessarily delay the proceedings. In Case No. 15 CV 001590, nine dates for trial were set. In Case No. 16 CV 000825, seven dates were set which were the same dates as in the earlier case after the two cases were consolidated on April 21, 2017 at Lindstedt's request. None of the requests for continuances were made by Lindstedt although he agreed to several. One continuance was granted the day before trial (set for August 7, 2018) after Lindstedt had traveled to Ohio from Missouri. On November 17, 2018, Reo requested a continuance of the trial set for January 29, 2019 due to his vacation travel in Europe and South America, the bad weather in January and February and the fact that he should be granted summary judgment that would render most of the trial moot. On December 26, 2018, he filed a notice of appeal to the Eleventh District Court of Appeals claiming this court improperly denied his motion for summary judgment including his claim for injunctive relief. He also claimed his motion to amend his complaint was improperly denied

along with this court's refusal to dismiss Lindstedt's counterclaim. None of the court's decisions were a final appealable order. On the same day, he filed a motion to stay proceedings pending appeal. The trial was continued. On February 20, 2019, Reo filed a motion to dismiss the appeal which was granted. The trial was reset to June 24, 2019. On May 28, 2019, Reo filed another motion to continue the trial one or two days due to a scheduling conflict in another court. This motion was withdrawn three days later. On June 18, 2019, Reo again requested a continuance to some time after July 7, 2019 due to a schedule conflict with another court. On June 20, 2019, this court denied the motion and trial commenced as scheduled on June 24, 2019.

In summary, the facts fail to show that Lindstedt acted merely to harass or maliciously injure another party in the above cases or that his filings were not warranted under existing law or lacked evidentiary support. Lindstedt did not initiate the lawsuits and his filings were reactive in nature. He does not meet the criteria of R.C. 2323.51 for sanctions or attorney fees. For the same reasons, his behavior does not meet the criteria for Civ.R. 11 for sanctions. Some of his arguments cannot be considered frivolous. Had he obtained an attorney, his claims and defenses may have fared better at trial.

In summary, plaintiff Bryan Reo's motions for sanctions pursuant to R.C. 2323.51 and for $4,200 in attorney fees for his attorney Bret Klimkowsky pursuant to R.C. 2323.51 and Civ.R. 11 are denied without a hearing.

IT IS SO ORDERED.

PATRICK J. CONDON
Judge of the Court of Common Pleas

Copies:
Bryan Anthony Reo, Esq., pro se, P.O. Box 5100, Mentor, Ohio 44061
Martin Lindstedt, pro se, 338 Rabbit Track Road, Granby, Missouri 64844
Church of Jesus Christ, Christian/Aryan Nations of Missouri, 338 Rabbit Track Road, Granby, Missouri 64844
Roxie Fausnaught, 338 Rabbit Track Road, Granby, Missouri 64844

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BRYAN ANTHONY REO	)	
	)	
Plaintiff,	)	CASE NOS. 16 CV 000825
	)	15 CV 001590
vs.	)	
	)	**OPINION AND JOURNAL ENTRY**
MARTIN LINDSTEDT, et al.	)	
	)	September 25, 2019
Defendants.	)	

This matter is before the court to address plaintiff Bryan Reo's motion for prejudgment interest pursuant to Civ.R. 59(B) [sic] beginning from September 18, 2014 or in the alternative, from September 18, 2015. Reo is seeking $18,521 dating from September 18, 2014. Defendant Martin Lindstedt filed two briefs in opposition. The court notes that Civ.R. 59(B) addresses motions for new trial rather than prejudgment interest.

R.C. 1343.03(B) and (C)(1) govern prejudgment interest in tort actions, and provide that: interest on a judgment, decree, or order for the payment of money rendered in a civil action based on tortious conduct and not settled by agreement of the parties, shall be computed from the date the cause of action accrued to the date on which the money is paid if upon motion of any party to the action, the court determines at a hearing held subsequent to the verdict or decision in the action that the party required to pay the money failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case. *Hirsh v. Lambert*, 11th Dist. Trumbull No. 2003-T-0164, 2004-Ohio-6687, ¶ 11.

R.C. 1343.03 sets forth certain requirements that must be met in order for a party to recover prejudgment interest. *Hirsh* at ¶ 12. First, a party seeking interest must petition the court, and the motion must be filed after judgment and in no event later than fourteen days after entry of judgment. *Id.* citing *Cotterman v. Cleveland Elec. Illum. Co.*, 34 Ohio St.3d 48, 517 N.E.2d 536, paragraph one of the syllabus. This was accomplished. Second, the trial court must hold a hearing on the motion. *Pruszynski v. Reeves*, 117 OS.3d 92, 2008-Ohio-510, 881 N.E.2d 1230, ¶ 1, 21. Third, the court must find that the party required to pay the judgment failed to make a good faith effort to settle. *Hirsh*. Lastly, the court must determine that the party to whom the

judgment is to be paid did not fail to make a good faith effort to settle the case. *Hirsh* citing *Moskovitz v. Mt. Sinai Med. Ctr.* 69 Ohio St.3d 638, 658, 635 N.E.2d 331 (1994).

Pursuant to *Pruszynski* and R.C. 1343.03, a hearing on plaintiff Bryan Reo's motion for prejudgment interest will be held on 10/7, 2019 at 9:30 am EST. Defendant Martin Lindstedt may make arrangements to appear remotely.

IT IS SO ORDERED.

PATRICK J. CONDON
Judge of the Court of Common Pleas

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Bryan Anthony Reo, Esq., pro se, P.O. Box 5100, Mentor, Ohio 44061
Martin Lindstedt, pro se, 338 Rabbit Track Road, Granby, Missouri 64844
Church of Jesus Christ, Christian/Aryan Nations of Missouri, 338 Rabbit Track Road, Granby, Missouri 64844

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LAKE COUNTY, OHIO

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BRYAN ANTHONY REO	)	
	)	
Plaintiff,	)	CASE NOS. 16 CV 000825
	)	15 CV 001590
vs.	)	
	)	**JUDGMENT ENTRY**
MARTIN LINDSTEDT, et al.	)	
	)	September 25, 2019
Defendants.	)	

This matter is before the court to address defendant Martin Lindsted's motion to set aside the jury verdict and enter judgment in defendant's favor or in the alternative for a new trial. Lindstedt cited Civ.R. 59(B) in his motion. Plaintiff Bryan Reo filed a brief in opposition.

The court notes that Civ.R. 59(B) requires a motion for a new trial be served not later than fourteen days after the entry of judgment. The same time limit applies to a motion for judgment notwithstanding the verdict (JNOV) pursuant to Civ.R. 50(B). Judgment in this case was filed on July 1, 2019. Lindstedt's motion for JNOV and alternatively for a new trial was filed on July 24, 2019 and is therefore untimely.

Accordingly, defendant Martin Lindsted's motion to set aside the jury verdict and enter judgment in defendants' favor or in the alternative for a new trial is denied.

IT IS SO ORDERED.

PATRICK J. CONDON
Judge of the Court of Common Pleas

Copies:
Bryan Anthony Reo, Esq., pro se, P.O. Box 5100, Mentor, Ohio 44061
Martin Lindstedt, pro se, 338 Rabbit Track Road, Granby, Missouri 64844
Church of Jesus Christ, Christian/Aryan Nations of Missouri, 338 Rabbit Track Road, Granby, Missouri 64844
Roxie Fausnaught, 338 Rabbit Track Road, Granby, Missouri 64844

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IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

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BRYAN ANTHONY REO	)	
	)	
Plaintiff,	)	CASE NOS. 16 CV 000825
	)	15 CV 001590
vs.	)	
	)	**JUDGMENT ENTRY**
MARTIN LINDSTEDT, et al.	)	
	)	September 25, 2019
Defendants.	)	

This matter is before the court to address pro se defendant Martin Lindsted's motion for sanctions against plaintiff Bryan Reo, Esq. and non-parties Brett A. Klimkowsky, Esq. and Kyle Bristow, Esq. Lindstedt seeks "negation" of a jury verdict rendered against him on June 26, 2019 along with $10,000 in sanctions against each of the above individuals along with their disbarment. Plaintiff Bryan Reo filed a brief in opposition. The court notes that there was no service to Klimkowsky and Bristow.

Defendant Martin Lindsted's motion for sanctions against the above individuals is denied.

IT IS SO ORDERED.

PATRICK J. CONDON
Judge of the Court of Common Pleas

Copies:
Bryan Anthony Reo, Esq., pro se, P.O. Box 5100, Mentor, Ohio 44061.
Martin Lindstedt, pro se, 338 Rabbit Track Road, Granby, Missouri 64844.

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