[Cite as *Texas Life Ins. Co. v. Peck*, 2020-Ohio-570.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT**
**COUNTY OF CUYAHOGA**

TEXAS LIFE INSURANCE COMPANY, :

Plaintiff-Appellee, :

No. 108352

v. :

VALERIE WAINWRIGHT PECK, ET AL., :

Defendants-Appellants. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** AFFIRMED
**RELEASED AND JOURNALIZED:** February 20, 2020

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Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-17-888990

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***Appearances:***

Forbes, Fields and Associates, Co., L.P.A., Scott H. Schooler, and Darrell A. Fields, *for appellees* Severn Wainwright, III, Caleb Wainwright, and Tearell Wainwright.

L. Bryan Carr, *for appellant*.

LARRY A. JONES, SR., P.J.:

**{¶ 1}** Defendant-appellant Valerie Wainwright Peck ("Peck") appeals from the trial court's March 18, 2019 judgment denying her motion for attorney fees and sanctions under R.C. 2323.51 and Civ.R. 11. For the reasons that follow, we affirm.

**Background**

**{¶ 2}** This case was an interpleader action brought by plaintiff-appellee Texas Life Insurance Company ("Texas Life Insurance") relative to the proceeds of a life insurance policy issued to its insured, decedent Severn Wainwright; the named defendants were Peck, Severn Wainwright, III ("Severn, III"), Caleb Wainwright ("Caleb"), and Tearell Wainwright ("Tearell"). Peck is the decedent's sister. The three other defendants — Severn, III, Caleb, and Tearell — are the decedent's children ("the Wainwright children").

**{¶ 3}** According to the interpleader complaint and documentation submitted in support thereof, in May 2014, the decedent executed a life insurance policy, with himself as the insured and his three children as the equal cobeneficiaries.

**{¶ 4}** On December 5, 2016, the decedent executed a change of beneficiary form, whereby he listed his sister, Peck, as the sole beneficiary of the subject policy. On December 6, 2016, the decedent executed a document naming his sister Peck as his durable power of attorney and granting her power and authority over various aspects of his financial, medical, and general well-being interests. The decedent passed away on December 15, 2016.

**{¶ 5}** Meanwhile, on December 8, 2016, Texas Life Insurance received the durable power of attorney and change of beneficiary documents. The company alleged in its complaint that, on December 21, 2016, the decedent's son, Severn, III, called the company, disputing the change of beneficiary form. The following day,

December 22, 2016, the company received a letter from nonparty Forbes, Fields & Associates law firm, stating that it represented Severn, III, who was disputing the change of beneficiary action and requesting that no benefits be paid until the matter was resolved. The letter stated that it was Severn, III's intention to file a legal action to preserve his rights if he and Peck could not resolve the matter on their own.

**{¶ 6}** In February 2017, Peck submitted a claim for the proceeds of the subject policy. In April 2017, Forbes, Fields & Associates filed an action in the court of common pleas on behalf of Severn, III, against Peck and Texas Life Insurance.[1] *See Wainwright, III v. Wainwright Peck, et al.*, Cuyahoga C.P. No. CV-17-879527. The insurance company answered and counter- and cross-claimed for interpleader. In July 2017, the trial court set a litigation schedule, which included Severn, III's expert report being due by December 15, 2017, and Peck's expert report being due by January 19, 2018.

**{¶ 7}** In October 2017, Peck filed a motion to compel discovery responses from Severn, III, and a motion for attorney fees against him. A telephone conference was held on the motion to compel, and the court ordered Severn, III to respond to the motion by October 30, 2017, or risk the possibility of sanctions. On October 31, 2017, Peck filed motions to (1) impose sanctions, (2) dismiss, and (3) for attorney fees. The motions were premised on Severn, III's failure to respond to Peck's discovery requests, or to even respond to the motion to compel. The trial court set

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[1]Another insurance company, American Fidelity Insurance Company, was also named as a defendant but was voluntarily dismissed by Severn, III.

the matter for a hearing to be held on November 15, 2017. On November 3, 2017, Severn, III voluntarily dismissed the case without prejudice.

**Case on Appeal: Interpleader Action**

**{¶ 8}** On November 14, 2017, Texas Life Insurance filed this interpleader action against Peck and the Wainwright children. Peck and the Wainwright children answered the complaint and counter- and cross-claimed, seeking the proceeds of the policy.

**{¶ 9}** In December 2017, the trial court set the case for a January 11, 2018 telephonic case management conference. The court ordered that all the parties (or their counsel) participate in the conference and "have their calendars available and be prepared to discuss service issues, discovery progress, scheduling matters, and alternative dispute resolution options."

**{¶ 10}** On January 11, 2018, Peck filed a motion to compel discovery from Severn, III, and a motion for attorney fees. The trial court denied the motions "for failure to abide by the court's standing orders concerning discovery disputes." The trial court's standing order on discovery disputes provides as follows:

> Parties are expected to make all reasonable efforts to settle discovery disputes among themselves. Parties are required to contact the staff attorney and initiate a telephone conference prior to filing any discovery motions (motion to compel, motion to quash, motion for protective order, etc.) Parties will be provided a full opportunity to make a record of any perceived discovery violations.

**{¶ 11}** The January 11 case management conference was held with all parties participating, and the trial court ordered Severn, III, to respond to outstanding

discovery by January 22, 2018, and ordered all other discovery to be completed by March 16, 2018; a pretrial hearing was set for March 19, 2018.

**{¶ 12}** A conference call was held on February 28, 2018, to discuss discovery disputes. Specifically, the Wainwright children sought their father's medical records from the year leading up to his death, and the medical providers sought to quash the subpoenas issued to them. The trial court found the records relevant to the issue of the deceased's competency when he executed the durable power of attorney and change of beneficiary documents and, therefore, denied the motions to quash. The trial court also ordered Peck to "fully respond to discovery requests" before the March 19 pretrial. Peck filed a notice with the court on March 13, 2018, stating that she had responded to the Wainwright children's discovery requests.

**{¶ 13}** On March 20, 2018, Texas Life Insurance filed a "consent order for payment of policy proceeds and dismissal." The order stated that with the "consent and joint stipulation" of all the parties, the insurance company would release the proceeds of the subject policy to Peck's counsel, who would hold the funds in his Interest on Lawyers Trust Account until further order of the trial court. The order also stated that once the proceeds were transferred to Peck's counsel the company would be dismissed from the action. On March 26, 2018, the insurance company filed a notice that the funds had been transferred to Peck's counsel.

**{¶ 14}** The action continued as to Peck and the Wainwright children. The trial court ordered that the Wainwright children file an expert report by June 8,

2018, Peck file an expert report by July 6, 2018, and dispositive motions be filed by July 20, 2018. The matter was set for an October 15, 2018 jury trial.

**{¶ 15}** On June 6, 2018, the Wainwright children sought a 60-day extension for the filing of their expert report. Peck opposed the motion, but the trial court granted the motion, allowing the Wainwright children until August 7, 2018, to file their expert report.

**{¶ 16}** On July 20, 2018, Peck filed a motion for summary judgment. On July 31, 2018, counsel for the Wainwright children (i.e., nonparty Forbes, Fields & Associates) filed a motion to withdraw from the case. The trial court held a hearing on counsel's motion and determined that there was a conflict between the Wainwright children that created a conflict for counsel.[2] The court therefore allowed counsel to withdraw and granted the Wainwright children 45 days to obtain new counsel. The October 2018 trial date was cancelled, and a pretrial was set for November 7, 2018.

**{¶ 17}** The November 7 pretrial was held; only Peck's counsel appeared. The trial court set another pretrial for November 26, 2018, and stated that "failure to appear will result in entry of judgment."

**{¶ 18}** On November 26, the trial court granted Peck's motion for summary judgment, which was unopposed. In December 2018, Peck filed a motion for attorney fees under R.C. 2323.51 and Civ.R. 11. Discharged counsel for the

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[2]The record also indicates that the Wainwright children were no longer able to pay counsel, but the court did not find that to be a sufficient ground for withdrawal.

Wainwright children, nonparty Forbes, Fields & Associates, opposed the motion. The trial court denied Peck's motion and this appeal ensues, with the sole assignment of error stating that "[t]he trial court erred in denying the appellant's motion for attorney fees and sanctions pursuant to R.C. 2323.51 and Civil Rule 11."

**Law and Analysis**

**R.C. 2323.51**

**{¶ 19}** R.C. 2323.51 governs the award of attorney fees as a sanction for frivolous conduct and outlines the requirements for such an award. R.C. 2323.51(B) provides that "any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal." R.C. 2323.51(A)(2)(a) defines frivolous conduct as conduct by a party to a civil action when:

> (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
>
> (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
>
> (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> (iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

**Civ.R. 11**

**{¶ 20}** Civ.R. 11, titled "signing of pleadings, motions, or other documents," provides as follows:

> The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule.

**{¶ 21}** "Civ.R. 11 employs a subjective bad-faith standard to invoke sanctions by requiring that any violation must be willful." *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510, ¶ 19, citing *Riston v. Butler*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, ¶ 9 (1st Dist.); *Ransom v. Ransom*, 12th Dist. Warren No. 2006-03-031, 2007-Ohio-457, ¶ 25. The Ohio Supreme Court has described bad faith as

> a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will. It partakes of the nature of fraud. * * * It means with actual intent to mislead or deceive another.

*Slater v. Motorists Mut. Ins. Co.*, 174 Ohio St. 148, 151, 187 N.E.2d 45 (1962). Thus, under Civ.R. 11, a court can impose sanctions only when the attorney or pro se

litigant acts willfully and in bad faith by filing a pleading that he or she believes lacks good grounds or is filed merely for the purpose of delay.

**Standard of Review**

**{¶ 22}** The decision to grant sanctions under R.C. 2323.51 and Civ.R. 11 rests with the sound discretion of the trial court. *Taylor v. Franklin Blvd. Nursing Home, Inc.*, 112 Ohio App.3d 27, 31-32, 677 N.E.2d 1212 (8th Dist.1996). A reviewing court will not reverse a trial court's decision to deny or grant sanctions absent an abuse of discretion. *Id.*; *see also Jurick v. Jackim*, 8th Dist. Cuyahoga No. 89997, 2008-Ohio-2346. An abuse of discretion is the "trial court's 'failure to exercise sound, reasonable, and legal decision-making.'" *Fast Property Solutions, Inc. v. Jurczenko*, 11th Dist. Lake Nos. 2012-L-015 and 2012-L-016, 2013-Ohio-60, ¶ 58, citing *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62, quoting *Black's Law Dictionary* 11 (8th Ed.Rev.2004).

**Analysis**

**{¶ 23}** According to Peck, the Wainwright children and their counsel "did nothing to prosecute their claims (and had no facts to support their claims)." Peck cites the following actions of the Wainwright children in support of her contention: (1) their lack of an expert report; (2) their failure to respond to her motion for summary judgment; (3) the withdrawal of their counsel; and (4) the voluntary dismissal of Severn, III of his case against her after his failure to provide discovery (*see Wainwright, III v. Wainwright Peck, et al.*, Case No. CV-17-879527).

**{¶ 24}** The trial court disagreed with Peck, however, stating the following:

> Quite simply, a change in beneficiary a mere two days before one's death is a questionable circumstance that justifies inquiry. Unfortunately, such an inquiry is not only time consuming and expensive but it is also factually difficult. While their efforts proved unsuccessful, Defendants Severn Wainwright, III, Caleb Wainwright and Terrell[3] Wainwright's actions do not characterize frivolous conduct.

**{¶ 25}** Upon review, we find no abuse of discretion in the trial court's judgment. It is true, as Peck points out, that the change in beneficiary did not occur a "mere two days" before the decedent's death — the decedent executed the change on December 5, 2016, and passed away ten days later on December 15. Nonetheless, the change occurred close in time to the decedent's death, which gave reasonable justification for the children's inquiry.

**{¶ 26}** We are not persuaded by Peck's contention that a "claim of undue influence is not a difficult claim," not one that is expensive to pursue, and her citation to *Young v. Kaufman*, 2017-Ohio-9015, 101 N.E.3d 655 (8th Dist.), in support thereof. The issue in *Young* was whether a deceased mother's estate plan, which disinherited two of her five children, was the product of undue influence by two of the other siblings. The case was initiated in probate court in October 2014, and continued until the beginning of 2017, during which time it was extensively litigated. The appeal resulted in reversal of the trial court's judgment, with a remand order for further proceedings. The case was neither simple nor inexpensive.

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[3]The name is sometimes spelled "Tearell" and other times "Terrell." We use the "Tearell" spelling because that was how it was initially spelled in the insurance company's interpleader complaint.

**{¶ 27}** The record here shows that the Wainwright children attempted to pursue their claim by obtaining their father's medical records. However, financial restraints were a bar to obtaining an expert and paying their lawyer. Their case was further complicated by conflicts amongst them. But the record does not support Peck's contention that the children's case was frivolous.

**{¶ 28}** Finally, Peck again correctly notes another "flaw" in the trial court's judgment — that it did not engage in any Civ.R. 11 analysis despite her motion for sanctions also being based on the rule. The lack of analysis would not have changed the result, however. The trial court's judgment demonstrates that it did not find the Wainwright children's conduct in this case to constitute a "dishonest purpose or some moral obliquity," so as to satisfy the "willfully and in bad faith" requirement under Civ.R. 11. *Slater v. Motorist Mut. Ins. Co.*, 174 Ohio St. at 151, 187 N.E.2d 45.

**{¶ 29}** In light of the above, the sole assignment of error is overruled.

**{¶ 30}** Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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.

LARRY A. JONES, SR., PRESIDING JUDGE

RAYMOND C. HEADEN, J., and
MARY EILEEN KILBANE, J., CONCUR