[Cite as *Telecom, Ltd. v. Wisehart & Wisehart, Inc.*, 2012-Ohio-4376.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Telecom, Ltd.,	:	
Plaintiff-Appellee,	:	
		No. 11AP-1147
v.	:	(M.C. No. 2010 CVF 006642)
Wisehart & Wisehart, Inc. et al.,	:	(REGULAR CALENDAR)
Defendants,	:	
[UChuze,	:	
Defendant-Appellant].	:	

D E C I S I O N

Rendered on September 25, 2012

Blaugrund, Herbert, Kessler, Miller, Myers & Postalakis, Inc., and *Fazeel S. Khan*, for appellee.

Douglas J. Hart, for appellant.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶ 1} Defendant-appellant, UChuze, appeals a judgment of the Franklin County Municipal Court awarding plaintiff-appellee, Telecom, Ltd. ("Telecom"), attorney fees and costs as a sanction for the failure of UChuze's attorney to attend a hearing. For the following reasons, we affirm.

{¶ 2} On February 18, 2010, Telecom filed an action alleging claims for breach of contract and fraud against UChuze, The Ohio Company, and Wisehart & Wisehart, Inc. ("Wisehart"). Trial was scheduled to occur on May 9, 2011. On that date, attorneys for

the parties informed the trial court that they had reached an oral settlement agreement. The attorneys recited the terms of the settlement agreement on the record. Specifically, UChuze's attorney stated that UChuze agreed to pay Telecom $500 within 30 days. The attorney for The Ohio Company and Wisehart stated that The Ohio Company agreed to pay Telecom $800 and Wisehart agreed to pay Telecom $500. Both sums would be paid immediately. Telecom's attorney indicated that Telecom would release its claims upon payment of the agreed-to sums. UChuze's attorney and the trial court then engaged in the following colloquy:

> THE COURT: * * * And as far as defendant UChuze, you mentioned 30 days. I think we spoke [prior to going on the record] about the possibility that that could be paid sooner than that.
>
> [UCHUZE'S ATTORNEY]: I'll do everything I can to get that taken care of. Often in my experience, Judge, entries take longer than money.
>
> * * *
>
> THE COURT: * * * How quickly can you get me the proposed entry that I hold until you notify me that the sums have been paid? A week?
>
> [UCHUZE'S ATTORNEY]: With what I have this week, Your Honor, the end of next week.
>
> * * *
>
> THE COURT: Okay. I will have a fully agreed entry signed by all of you no later than May 20th.
>
> [UCHUZE'S ATTORNEY]: That's our goal, Your Honor.
>
> * * *
>
> THE COURT: All right. Why don't we schedule this for a miscellaneous hearing on that Monday afternoon. If for whatever reason that entry is not in my hands, fully agreed, you'll come down here Monday afternoon, on the 23rd of May at -- [l]et's say 1:00 o'clock in the afternoon -- and you'll sit down here and have an opportunity to complete your work on that agreement. I anticipate that by that same date the funds should all be paid.

(May 9, 2011 Tr. 4-6.)

{¶ 3} At 3:00 p.m. on Friday, May 20, 2011, UChuze's attorney emailed a draft of a document entitled "Agreed Dismissal Entry" to the other parties' attorneys for review. In relevant part, the draft entry stated:

> A. Defendant Wisehart & Wisehart, Inc. shall pay to the Plaintiff the sum of $500.00.
>
> B. Defendant The Ohio Company shall pay to the Plaintiff the sum of $800.00.
>
> C. Defendant UChuze shall pay to the Plaintiff the sum of $500.00.
>
> D. * * * The foregoing sums having been received by Plaintiff, Plaintiff's action against all Defendants is hereby dismissed with prejudice.

{¶ 4} Neither of the attorneys who received the email responded until Monday, May 23, 2011. That morning, Telecom's attorney sent defendants' attorneys an email notifying them that Telecom had received a settlement check from Wisehart, but not from UChuze or The Ohio Company. The outstanding payments presented a problem because the draft entry stated that Telecom had already received all amounts due. In a reply email, UChuze's attorney asked if Telecom's attorney had any objection to the form of the draft entry. The email further stated that, "If not, * * * we can come up with a plan to contact the court and let them know that the entry will be filed as soon as you get the checks [from UChuze and The Ohio Company]." Telecom's attorney responded that the draft entry was "fine," and then followed with a second email asking, "How would you like to proceed? Shall we ask the court to postpone the hearing for a week to give time for the checks to come in?" UChuze's attorney agreed to that course of action.

{¶ 5} Although Telecom's attorney contacted the trial court, the judge was not available to rule on the request for postponement. Telecom's attorney then sent UChuze's attorney an email informing him that he was unable to obtain the trial court's permission to postpone the hearing. However, because UChuze's attorney had departed his office to attend another appointment, he did not see the email prior to the 1:00 p.m. hearing.

{¶ 6} Telecom's attorney attended the hearing, but defendants' attorneys did not appear. The day after the hearing, Telecom filed a motion seeking the attorney fees and

costs it had to pay for its attorney to attend the hearing. Telecom represented that those fees and costs amounted to $545.30. Telecom requested that the trial court order UChuze and The Ohio Company to each pay half of that amount, or $272.65.

{¶ 7} The trial court granted Telecom's motion in an entry dated June 9, 2011. The trial court found that UChuze and The Ohio Company had violated Loc.R. 6.01 of the Franklin County Municipal Court ("Loc.R. 6.01") when their attorneys failed to appear at the May 23, 2011 hearing. The trial court sanctioned the parties by requiring them each to pay $272.65 to Telecom.

{¶ 8} On October 6, 2011, the trial court issued an entry partially vacating the June 9, 2011 entry. Because Telecom failed to present any evidence of its attorney fees and costs with its motion, the trial court concluded that it should have held a hearing before determining the amount of the sanction. Thus, the trial court vacated the portion of the entry setting the amount of the sanction, but upheld the portion of the entry that found UChuze and The Ohio Company liable for the sanction. The trial court scheduled a hearing for November 2, 2011 so that the parties could present evidence and argument regarding the amount and reasonableness of the attorney fees and costs expended.

{¶ 9} During the November 2, 2011 hearing, defendants' attorneys stipulated that Telecom had spent $545.30 for its attorney to attend the May 23, 2011 hearing, and that that amount was reasonable. At the request of defendants' attorneys, the trial court agreed to reconsider whether to impose any sanction for their failure to appear at the May 23, 2011 hearing. The trial court then asked UChuze's attorney if he wished to present any evidence or argument on the issue of UChuze's liability for sanctions. When he declined, the trial court stated:

> [F]rankly, [when] we went on the record in May, we came to an understanding that we laid out on the record of who's responsible for paying what to complete the settlement and finalize the matter with a time frame for doing so and scheduling a hearing before this Court in the event that that final entry wasn't submitted. It was not of any concern or interest to the Court who was at fault for that final entry not being in my hands by that date. But as I viewed it, and ordered, if for whatever reason I did not have a final entry, I wanted three people here so that we could actually finalize the matter.

(Nov. 2, 2011 Tr. 26.)

{¶ 10} After reconsidering the matter, the trial court issued a judgment on November 28, 2011 that again granted Telecom's motion and sanctioned UChuze and The Ohio Company. In the judgment, the trial court restated that it had required the parties' attorneys to appear at the May 23, 2011 hearing if the parties could not present the trial court with a fully agreed entry by the hearing date. Because no such entry was submitted by May 23, 2011, defendants' attorneys' failure to appear violated the trial court's order. The trial court sanctioned this violation by ordering UChuze and The Ohio Company to each pay $272.65 to Telecom in addition to the amounts the settlement agreement obligated them to pay. Also, the trial court noted that all the parties concurred that the litigation was fully settled, and thus, it dismissed the case with prejudice.

{¶ 11} UChuze now appeals the November 28, 2011 judgment, and it assigns the following errors:

> [1.] The Trial Court Erred As A Matter of Law By Awarding Attorneys Fees to Appellee Without Statutory or Other Authority for the Award.
>
> [2.] The Trial Court Abused its Discretion by Ordering Appellant to Pay Attorneys Fees to Appellee.
>
> [3.] The Trial Court's Order Directed to Appellant to pay Attorneys Fees to Appellee is Against the Manifest Weight of the Undisputed Evidence.
>
> [4.] The Trial Court erred as a matter of law by producing a Final Entry that deviates materially from the agreement made by the parties in open court and is otherwise vague, omitting developments within the trial court's knowledge.

{¶ 12} By UChuze's first assignment of error, it argues that the trial court lacked authority to impose a sanction for its attorney's failure to attend the May 23, 2011 hearing. We disagree.

{¶ 13} A trial court may adopt rules concerning pretrial procedure that vest the trial court with the discretionary power to impose sanctions on parties who violate those rules. *Pang v. Minch*, 53 Ohio St.3d 186, 193-94 (1990). The Franklin County Municipal Court adopted Loc.R. 6.01 to govern pretrial procedure. That rule allows the trial court to order pretrial hearings. Further, the rule states that:

> It shall be the duty of counsel to do the following at the pretrial hearing and failure to be prepared may result in dismissal of the case for want of prosecution or in a default or such other action to enforce compliance as the trial judge deems appropriate.
>
> 1. The counsel who will be trial counsel and who is fully authorized to act and negotiate on behalf of the party must be present * * *.

Thus, pursuant to Loc.R. 6.01, the trial court may sanction a party if its attorney fails to appear for a pretrial hearing. Such sanction may include "an order to pay the attorney's fees of [the party whose counsel attended the hearing] as compensation for counsel appearing at a fruitless pretrial conference." *Am. Hous. Corp. v. Rhoades*, 1 Ohio App.3d 130, 131 (10th Dist.1981).

{¶ 14} UChuze argues that Loc.R. 6.01 cannot apply here because the May 23, 2011 hearing was only a "miscellaneous hearing," not a pretrial hearing. We are not persuaded by this argument. The hearing occurred in the pretrial phase of the litigation and was explicitly scheduled to facilitate settlement. Therefore, the hearing qualified as a pretrial hearing. *See Fenikile v. Powell*, 190 Ohio App.3d 452, 2010-Ohio-5644, ¶ 21 (6th Dist.) (holding that the purpose of a pretrial hearing is to carry forward negotiations in the hope of bringing about an agreeable settlement); *In re Davis*, 8th Dist. No. 82233, 2003-Ohio-5074, ¶ 24 (recognizing that discussion of settlement is an integral part of any pretrial conference).

{¶ 15} Moreover, Loc.R. 6.01 was not the only source of authority on which the trial court could rely to sanction UChuze. Trial courts possess inherent authority to sanction a party for its attorney's failure to follow the court's orders. *Wallace v. Hawkins*, 10th Dist. No. 00AP-728 (Mar. 13, 2001); *accord Reese v. Proppe*, 3 Ohio App.3d 103, 107 (8th Dist.1981) ("[T]he Civil Rules have not divested trial courts of their inherent power to impose sanctions upon a party disobeying court orders."); *Rhoades* at 131 ("There is no question that trial courts have authority to impose sanctions where the actions of a party operate to thwart the judicial process."). " 'Courts of general jurisdiction possess inherent power to do all things necessary to the administration of justice and to protect their own powers and processes.' " *Wallace*, quoting *Slabinski v. Servisteel Holding Co.*, 33 Ohio App.3d 345, 346 (9th Dist.1986); *see also State v. Busch*, 76 Ohio St.3d 613, 615 (1996),

quoting *Royal Indemn. Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 33-34 (1986) ("A court has the 'inherent power to regulate the practice before it and protect the integrity of its proceedings.' "). These inherent powers include the power to assess attorney fees as a sanction for an abuse of judicial process. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 45 (1991); *see also Huntington Mtge. Co. v. Kelley*, 5th Dist. No. 02 CA 14, 2002-Ohio-5612, ¶ 19 (holding that a trial court could impose attorney fees as a sanction for an attorney's failure to appear at a hearing); *Fouad v. Velie*, 10th Dist. No. 01AP-283 (Nov. 8, 2001) (holding that trial courts have the inherent power to sanction the filing of a frivolous complaint through an award of attorney fees); *Slabinski* at syllabus (holding that courts have the inherent power to award attorney fees and expenses against a party who improperly induced the trial court to sign a judgment dismissing the case).[1]

{¶ 16} Here, the trial court did not specify in its November 28, 2011 judgment the authority it invoked to sanction UChuze. Nonetheless, the trial court had at least two bases on which to order UChuze to pay Telecom's attorney fees for its attorney's failure to appear at the May 23, 2011 hearing. We thus overrule UChuze's first assignment of error.

{¶ 17} UChuze's second and third assignments of error are interrelated, so we will address them together. By these two assignments of error, UChuze contends that the trial court abused its discretion in sanctioning it under the circumstances presented. We disagree.

{¶ 18} Whether the trial court sanctioned UChuze under Loc.R. 6.01 or its inherent power, we review the decision to impose a sanction for an abuse of discretion. *Pang* at 194; *Wallace*. An abuse of discretion involves more than an error of law or judgment; it connotes an attitude that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 19} Here, the trial court ordered the parties' attorneys to attend the May 23, 2011 hearing "[i]f for whatever reason that entry is not in my hands, fully agreed," by the date of the hearing. (May 9, 2011 Tr. 6.) The draft entry that UChuze's attorney circulated on May 20, 2011 stated that Telecom had already received all the settlement funds, but Telecom did not yet have settlement checks from either UChuze or The Ohio Company.

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[1] We emphasize that a trial court must exercise its inherent powers with restraint, and it must comply with the mandates of due process. *Chambers* at 50.

Due to this situation, Telecom could not fully agree to the draft entry. UChuze's attorney indicated that he understood Telecom's dilemma when he suggested in his May 23, 2011 email that the parties' attorneys contact the trial court to let it know that the parties would delay filing the draft entry until Telecom received all the settlement checks. Because no "fully agreed" entry existed as of the morning of May 23, 2011, Telecom's attorney attempted to obtain the trial court's permission to postpone the hearing. When his effort failed, all the parties' attorneys were obligated to comply with the court order to attend the hearing.

{¶ 20} UChuze's attorney points out that, prior to ordering the May 23, 2011 hearing, the trial court asked, "How quickly can you get me the proposed entry that I hold until you notify me that the sums have been paid?" (May 9, 2011 Tr. 5.) From this question, UChuze's attorney infers that the trial court only wanted an entry that the parties had agreed to in form by May 23, 2011. UChuze presumes that the trial court would have delayed filing that entry until each defendant performed its contractual duty to pay the assigned settlement amount. UChuze's inference and presumption are contrary to the trial court's interpretation of its own mandate. On May 9, 2011, the trial court stated:

> If for whatever reason that entry is not in my hands, fully agreed, you'll come down here Monday afternoon, on the 23rd of May at -- [l]et's say 1:00 o'clock in the afternoon -- and you'll sit down here and have an opportunity to complete your work on that agreement. I anticipate that by that same date the funds should all be paid.

(May 9, 2011 Tr. 6.) By these words, the trial court believed that it required the parties to produce a signed, agreed entry that could be immediately filed to terminate the case. We find no abuse of discretion in this interpretation. The trial court told the parties that it wanted a "fully agreed" entry and all settlement funds paid by May 23, 2011. With these two items accomplished, the agreed entry would be a final judgment once filed.

{¶ 21} UChuze also argues that, with the parties' agreement to the form of the entry, there was nothing left to accomplish at the May 23, 2011 hearing, so its attorney did not need to appear. UChuze's belief that the hearing would serve no purpose is beside the point. The trial court had made an order that UChuze was obligated to comply with, regardless of whether it saw any utility in the order.

{¶ 22} Next, UChuze argues that the trial court should have sanctioned all four parties, and not just it and The Ohio Company. We find this argument unavailing. The trial court did not sanction Telecom because its attorney complied with the trial court's order. The trial court did not sanction Wisehart because it had paid Telecom the sums it owed under the settlement agreement, and thus, it played no role in creating the situation that prevented the parties from reaching full agreement to the draft entry.

{¶ 23} In sum, we conclude that the trial court ordered the parties to attend the May 23, 2011 hearing if they could not present the court with an entry that could be filed to terminate the case. Because no such entry was submitted by May 23, 2011, all parties were required to appear at the hearing. The trial court, thus, did not abuse its discretion in sanctioning UChuze for its attorney's failure to attend the hearing. Therefore, we overrule UChuze's second and third assignments of error.

{¶ 24} By UChuze's fourth assignment of error, it argues that the November 28, 2011 judgment is vague and inconsistent with the terms of the settlement agreement. We disagree. The November 28, 2011 judgment orders UChuze to pay $272.65 in addition to the $500 that it agreed to pay Telecom under the settlement agreement. UChuze thus owes Telecom $772.65. Finding no ambiguity or inconsistency in the November 28, 2011 judgment, we overrule UChuze's fourth assignment of error.

{¶ 25} For the forgoing reasons, we overrule UChuze's four assignments of error, and we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.