

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CLAYTON B. SMITH

Plaintiff-Appellee

vs.

CRAIG T. CONLEY

Defendant-Appellant

: JUDGES:
: Hon. W. Scott Gwin, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. W. Don Reader, V.J. (Retired
: from the Fifth Appellate District,
: Sitting by Supreme Court
: Assignment)
:
: Case No. 2004CA00116
:
: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2003CV02854

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

December 20, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

CLAYTON B. SMITH, PRO SE
6105 Cedar Lane NW
Canton, OH 44708

A. ELIZABETH CARGLE
80 South Summit Street
Suite 200

Akron, OH 44308

Farmer, J.

{¶1} On September 5, 2003, appellee, Clayton Smith, filed a legal malpractice complaint against appellant, Craig Conley. Appellant had represented appellee in a criminal matter in which a jury on August 21, 2002 convicted appellee of passing a bad check in violation of R.C. 2913.11 (Case No. 2002CR0215).

{¶2} On November 4, 2003, appellant filed a motion for leave to plead. On November 10, 2003, appellee filed a motion for default judgment. By judgment entry filed November 12, 2003, the trial court denied appellee's motion for default judgment and granted appellant's motion for leave to plead.

{¶3} Appellant filed an answer and counterclaim on November 25, 2003 and a motion for summary judgment on December 19, 2003. By judgment entry filed February 4, 2004, the trial court granted appellant's motion for summary judgment, finding appellee's claim was barred by the applicable statute of limitations.

{¶4} On February 25, 2004, appellant filed a motion for sanctions pursuant to Civ.R. 11 and frivolous conduct in violation of R.C. 2323.51.

{¶5} On March 12, 2004, the trial court dismissed the entire case. The trial court denied appellant's request for sanctions on April 5, 2004.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

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{¶7} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR SANCTIONS FOR WILLFUL VIOLATION OF CIVIL RULE 11 AND FOR FRIVOLOUS

CONDUCT IN VIOLATION OF R.C. 2323.51 AND REQUEST FOR HEARING, AND DENIAL OF THE MOTION IS NOT SUPPORTED BY THE RECORD."

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{¶8} Appellant claims the trial court erred in denying his Civ.R. 11 motion for sanctions. Consistent with our reversal of the dismissal of the legal malpractice claim in Case No. 2004CA00068, we reverse and remand the issue of sanctions to the trial court for disposition at the conclusion of the underlying action.

{¶9} The sole assignment of error is granted.

{¶10} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby reversed and remanded.

By Farmer, J.

Gwin, P.J. and

Reader, V.J. concur.

JUDGES

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CLAYTON B. SMITH

Plaintiff-Appellee

-VS-

CRAIG T. CONLEY

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 2004CA00116

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Stark County, Ohio is reversed and the matter is remanded to said court for further proceedings consistent with this opinion.

JUDGES