

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Steven Hanson

Court of Appeals No. E-08-045

Appellant

Trial Court No. 2004-CV-539

v.

Albert T. Riccardi, etc.

DECISION AND JUDGMENT

Appellee

Decided: June 19, 2009

* * * * *

Loretta A. Riddle, for appellant.

J. Mark Trimble and Todd M. Zimmerman, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant, Steven Hanson, appeals the trial court's entry of judgment: (1) denying his motion for sanctions and attorney fees; and (2) requiring appellant to pay the costs of his voluntarily dismissed action. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} The relevant facts are undisputed in this case, and are as follows. The instant matter was set for a jury trial on May 23, 2006 at 1:30 p.m. On May 23, 2006, at 12:35 p.m., less than one hour prior to the commencement of the jury trial, appellant filed a "Notice of Voluntary Dismissal". Upon learning of the notice of voluntary dismissal, counsel for appellee requested the opportunity to file two motions: (1) a motion for expenses pursuant to Civ.R. 41(D); and (2) a motion challenging appellant's right to refile. The court granted the request, stating in its order that it had retained jurisdiction for the limited purpose of ruling on appellee's two motions.

{¶ 3} Appellee subsequently filed a motion for costs, requesting costs and attorney fees related to preparing for a trial that never took place. Appellant, in turn, filed a response and a motion for sanctions. On August 18, 2006, prior to any decision being made on either of the motions, appellee filed a notice of withdrawal of its motion for costs.

{¶ 4} On April 29, 2008, the trial court denied appellant's motion for sanctions, and reiterated its position that appellant would have to pay the court costs of the dismissed case before a stay would be lifted in the newly-filed action.

{¶ 5} Appellant timely filed the instant appeal, raising the following assignments of error:

{¶ 6} I. "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY DENYING PLAINTIFF'S MOTION FOR SANCTIONS BASED ON DEFENDANT'S VIOLATION OF CIVIL RULE 11 AND OHIO REVISED CODE § 2323.51 WHEN

THE COURT FAIL[ED] TO HAVE AN EVIDENTIARY HEARING AND TAKE[] INTO CONSIDERATION 'INTENT' WHEN MAKING A DETERMINATION THAT SANCTIONS ARE NOT AWARDABLE UNDER R.C. § 2323.51."

{¶ 7} II. "DOES THE FILING OF A POVERTY AFFIDAVIT SATISFY THE REQUIRMENTS OF CIVIL RULE 41 REQUIRING A PLAINTIFF TO PAY PAST COSTS IN A PREVIOUSLY DISMISSED ACTION AND DOES THE COURT ABUSE ITS DISCRETION BY NOT HOLDING AN EVIDENTIARY HEARING ON THE ISSUE OF A PLAINTIFF'S POVERTY."

{¶ 8} We begin by considering appellant's first assignment of error, wherein he alleges that the trial court erred in denying his motion for sanctions. But before we address the merits of this assignment of error, we must address the question of whether the trial court had jurisdiction to hear appellant's motion.

{¶ 9} As indicated above, appellant's motion for sanctions was not filed until after appellant's dismissal of the underlying action. Once appellant dismissed his complaint, the trial court lost jurisdiction to consider a post-dismissal motion for sanctions. See *David v. Kaiser*, 6th Dist. No. L-03-1315, 2004-Ohio-3149, ¶ 7, citing *Dyson v. Adrenaline Dreams Adventures* (2001), 143 Ohio App.3d 69, 71. Accordingly, appellant's first assignment of error is found not well-taken.

{¶ 10} Appellant seems to argue in his second assignment of error that the trial court improperly required him to pay the costs of this action, despite his having filed an affidavit of indigency. In addition, he seems to allege that the trial court erred in failing

to hold a hearing on the issue of appellant's poverty. Finally, appellant argues, "Plaintiff's position is that an affidavit of indigency to cover costs is sufficient to allow a case to proceed and [automatically] lifts any stay placed by the Court." In ruling upon this assignment of error, we focus our attention upon the last of these arguments.

{¶ 11} In a prior appeal of this case, this court reversed an earlier ruling by the trial court that court costs in the instant case would have to be filed before appellant would be permitted to refile his action. See *Hanson v. Riccardi*, 6th Dist. No. E-06-047, 2007-Ohio-449. In compliance with this court's decision and Civ.R. 41, the trial court re-imposed the court costs from this case in the refiled action and has stayed the proceedings in the refiled case until such time as court costs are paid. Because the ruling concerning costs in this case has been made -- by necessity -- in the refiled case, rather than in the instant case, any issue that appellant has with the imposition of court costs or the stay in the refiled case, or regarding the impact of an indigency affidavit on the costs or stay, must be addressed in the context of the subsequent case. Simply stated, this court lacks jurisdiction through the appeal of the instant case to remedy what appellant feels is an error in the refiled action.¹ Accordingly, appellant's second assignment of error is found not well-taken.

¹Although the trial court acknowledged in its April 29, 2008 judgment entry that appellant would have to pay the court costs of the dismissed case before a stay would be lifted in the newly-filed action, such statement is without legal effect, because the trial court lost jurisdiction to address the issue upon appellant's voluntary dismissal of this action. See *Hanson*, supra; *Stiriz v. Nissen*, 6th Dist. No. L-05-1390, 2006-Ohio-3986, ¶ 11, citing *Sturm v. Sturm* (1992), 63 Ohio St.3d 671, 676 (holding that "once the * * * action was voluntarily dismissed under Civ.R. 41(A)(1)(a), the [court] lost jurisdiction over the matter and could not award costs under Civ.R. 41(D))."

{¶ 12} For all of the foregoing reasons, the judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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