[Cite as *Internatl. Union of Operating Engineers, Local 18 v. Laborers' Internatl. Union of N. Am., Local 310*, 2017-Ohio-1055.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104774

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18

PLAINTIFF-APPELLEE

vs.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 310

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-847961

BEFORE: McCormack, P.J., E.T. Gallagher, J., and Stewart, J.

RELEASED AND JOURNALIZED: March 23, 2017

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TIM McCORMACK, P.J.:

{¶1} Defendant-appellant, Laborers' International Union of North America, Local 310 ("Local 310"), appeals from the trial court's decision denying its motion for attorney fees. For the reasons that follow, we affirm.

Procedural History and Substantive Facts

{¶2} In 2011, International Union of Operating Engineers, Local 18 ("Local 18") filed a complaint against CNR Trucking, Inc. ("CNR Trucking") and Local 310, alleging breach of contract against CNR Trucking and tortious interference with contract against Local 310. Local 18 sought compensatory damages from CNR Trucking and Local 310, punitive damages from Local 310, and specific performance of the agreements from CNR Trucking. In response, both Local 310 and CNR Trucking filed motions for judgment on the pleadings, arguing that the court lacked subject matter jurisdiction over Local 18's complaint because the claims were preempted by the National Labor Relations Act ("NLRA"). The trial court granted the motions and dismissed the complaint without prejudice for lack of subject matter jurisdiction, finding that Local 18's claims were preempted by Section 8(b)(4)(D) of the NLRA. Local 18 appealed, claiming the trial court erred in finding its claim against Local 310 for tortious interference was preempted by the NLRA.

{¶3} In 2013, this court affirmed the decision of the trial court. *See Internatl. Union of Operating Engineers, Local 18 v. CNR Trucking Inc.*, 2013-Ohio-2094, 992 N.E.2d 503 (8th Dist.). We found that Local 18's tortious interference claim was

preempted under the "*Garmon* preemption" outlined in *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959), because the conduct alleged is "arguably subject to" Section 8(b)(4)(D) of the NLRA, which governs jurisdictional disputes between unions. *CNR Trucking Inc.* at ¶ 13. In reaching this conclusion, we determined that Local 18's claim that Local 310 coerced CNR Trucking to repudiate its agreement with Local 18 and assign the disputed work to Local 310's members was conduct that is "arguably prohibited by" the act. In recognizing that there must be a claim to the same work made by two competing groups, we further found that in seeking specific performance from CNR Trucking, Local 18 was demanding that CNR Trucking assign the disputed work to Local 18. Thus, we determined that the *Garmon* preemption applied and Local 18's claim was subject to the exclusive jurisdiction of the National Labor Relations Board ("NLRB"). *CNR Trucking Inc.* at ¶ 12-18.

{¶4} In 2015, Local 18 filed another complaint. This complaint alleged tortious interference against Local 310 regarding the same three contracts identified in the 2011 complaint. This complaint, however, omitted CNR Trucking as a party, and likewise, it did not include any breach of contract claim against CNR Trucking, as it did in the 2011 complaint. Once again, Local 310 filed a motion for judgment on the pleadings, claiming that the conduct alleged in this complaint is identical to the conduct alleged in the 2011 complaint and, therefore, this 2015 complaint should likewise be dismissed for lack of subject matter jurisdiction.

{¶5} In 2016, the trial court granted Local 310's motion, finding that "the conduct upon which [Local 18's] complaint is based is identical to conduct the 8th District Court of Appeals held this court is without jurisdiction to hear." The trial court cited *CNR Trucking Inc.*, *supra*, and concluded it did not have subject matter jurisdiction. The court therefore dismissed Local 18's complaint.[1]

{¶6} Thereafter, Local 310 filed a motion for attorney fees pursuant to Civ.R. 11 and R.C. 2323.51 against Local 18. In its motion, Local 310 argued that Local 18's counsel violated Civ.R. 11 because he was aware of the duplicative and groundless nature of the complaint, as he was the same attorney in both actions. Local 310 also claimed that Local 18's counsel violated R.C. 2323.51 because no reasonable attorney would have filed the complaint in 2015 in light of the 2013 precedent from the 8th District Court of Appeals in *CNR Trucking Inc.*, 2013-Ohio-2094, 992 N.E.2d 503, which found that the court lacked subject matter jurisdiction over Local 18's claims. Local 310 requested a hearing on its motion. In response, Local 18 stated that its 2015 complaint was filed in good faith, because this recent complaint did not name CNR Trucking as a party and Local 18 did not include the allegation against CNR Trucking for breach of contract. Thus, as Local 18 claims, these changes in its complaint cured any jurisdictional defect. Local 18 contended that a recent decision by this court released on March 26, 2015, *Internatl. Union of Operating Engineers, Local 18 v. Norris Bros. Co.*, 8th Dist. Cuyahoga No. 101353, 2015-Ohio-1140, supports its position.

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[1] Local 18 did not appeal this decision.

{¶7} The trial court denied Local 310's motion for attorney fees. Local 310 now appeals the trial court's denial of its motion.

Motion for Attorney Fees

{¶8} In its sole assignment of error, Local 310 contends that the trial court erred when it denied Local 310's motion for attorney fees. Local 310 argues that Local 18's filing of its complaint against Local 310 in 2015 was legally groundless and frivolous. Local 310 therefore claims that under Civ.R. 11 and R.C. 2323.51, it is entitled to attorney fees.

{¶9} Both Civ.R. 11 and R.C. 2323.51 provide a means by which an aggrieved party may recover attorney fees for frivolous conduct. *Bikkani v. Lee*, 8th Dist. Cuyahoga No. 89312, 2008-Ohio-3130, ¶ 18. Although both the rule and the statute authorize the award of attorney fees as a sanction for frivolous conduct, they have separate standards of proof and differ in application. *Id.*

{¶10} Neither Civ.R. 11 nor R.C. 2323.51 mandate an award of attorney fees; rather, the ultimate decision whether to deny or grant attorney fees under Civ.R. 11 and R.C. 2323.51 rests within the sound discretion of the trial court. *Nancy Lowrie & Assocs., L.L.C. v. Ornowski (In re Krueger)*, 8th Dist. Cuyahoga No. 100694, 2014-Ohio-3718, ¶ 13, citing *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510, ¶ 19 (Civ.R. 11); *Carbone v. Nueva Constr. Group*, 8th Dist. Cuyahoga Nos. 103942 and 104147, 2017-Ohio-382, ¶ 21, citing *State ex rel. Davis v. Metzger*, 145 Ohio St.3d 405, 2016-Ohio-1026, 49 N.E.3d 1293, ¶ 9 (R.C.

2323.51); *see also State ex rel. Bell v. Madison Cty. Bd. of Commrs.*, 139 Ohio St.3d 106, 2014-Ohio-1564, 9 N.E.3d 1016, ¶ 10, citing *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, 957 N.E.2d 19, ¶ 11. As such, even in instances where frivolous conduct exists, a trial court may, in its considerable discretion, deny attorney fees. *Scott v. Nameth*, 10th Dist. Franklin No. 16AP-64, 2016-Ohio-5532, ¶ 32; *see also ABN Amro Mtge. Grp., Inc. v. Evans*, 8th Dist. Cuyahoga No. 98777, 2013-Ohio-1557, ¶ 32.

{¶11} A reviewing court will therefore not reverse a trial court's decision to deny or grant a motion for sanctions absent an abuse of discretion. *Nancy Lowrie & Assocs., L.L.C.*; *Carbone*. "As long as some competent, credible evidence exists to support the lower court's judgment, no abuse of discretion will be found to have occurred." *Nancy Lowrie & Assocs., L.L.C.* The trial court is in the best position to appraise the conduct of the parties, and we must defer to the trial court's ruling on a motion for sanctions. *First Place Bank v. Stamper*, 8th Dist. Cuyahoga No. 80259, 2002-Ohio-3109, ¶ 17. An abuse of discretion occurs when a trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶12} Civ.R. 11 governs the signing of pleadings, motions, and other documents and provides that

> [t]he 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.

{¶13} In considering a motion for sanctions under Civ.R. 11, a court must determine "whether the attorney signing the document (1) has read the pleading, (2) harbors good grounds to support it to the best of his or her knowledge, information, and belief, and (3) did not file it for purposes of delay." *Ceol v. Zion Indus., Inc.*, 81 Ohio App.3d 286, 290, 610 N.E.2d 1076 (9th Dist.1992). If the court determines that any of these requirements have not been met, it must then determine whether the violation was willful as opposed to merely negligent. *Id.* In deciding whether the violation was willful, the trial court applies a subjective standard. *Lakeview Holding (OH), L.L.C. v. Haddad*, 8th Dist. Cuyahoga No. 98744, 2013-Ohio-1796, ¶ 17.

{¶14} Under R.C. 2323.51,"frivolous conduct" is conduct that satisfies any of the following:

> (I) It obviously serves merely to harass or maliciously injure another party to the civil action * * * 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.

R.C. 2323.51(A)(2)(a)(I)-(iv).

{¶15} In determining whether a claim is frivolous under R.C. 2323.51(A)(2)(a)(ii), the test is objective — whether no reasonable lawyer would have brought the action in light of the existing law. *Orbit Elecs., Inc. v. Helm Instrument Co.*, 167 Ohio App.3d 301, 2006-Ohio-2317, 855 N.E.2d 91, ¶ 49 (8th Dist.), citing *Riston v. Butler*, 149 Ohio App.3d 390, 397-398, 2002-Ohio-2308, 777 N.E.2d 857 (1st Dist.). A claim is therefore frivolous "'if it is absolutely clear under the existing law that no reasonable lawyer could argue the claim.'" *Orbit*, quoting *Hickman v. Murray*, 2d Dist. Montgomery No. CA 15030, 1996 Ohio App. LEXIS 1028, 14 (Mar. 22, 1996). This court has held that the filing of claims that are not warranted under existing law is conduct deemed frivolous, including claims that are "clearly barred" by res judicata. *In re Carothers*, 8th Dist. Cuyahoga No. 96369, 2011-Ohio-6754, ¶ 10; *Crenshaw v. Integrity Realty Grp., L.L.C.*, 8th Dist. Cuyahoga No. 100031, 2013-Ohio-5593, ¶ 16.

{¶16} Conduct is not frivolous, however, "merely because a claim is not well-grounded in fact or lacks evidentiary support." *Cleveland v. Abrams*, 8th Dist. Cuyahoga No. 97814, 2012-Ohio-3957, ¶ 19. And the fact that a legal claim was unsuccessful does not, in and of itself, warrant sanctions. *Halliwell v. Bruner*, 8th Dist. Cuyahoga Nos. 76933, 77487, 2000 Ohio App. LEXIS 5896, 24 (Dec. 14, 2000); *Miller v. Miller*, 5th Dist. Holmes No. 11CA020, 2012-Ohio-2905, ¶ 18 ("R.C. 2323.51 does not purport to punish a party for raising an unsuccessful claim.").

{¶17} Moreover, while the ultimate decision to impose sanctions for frivolous conduct rests within the trial court's discretion, a review of what actually constitutes frivolous conduct under R.C. 2323.51 may necessarily require a factual and legal inquiry. *In re Carothers*. Thus, although some deference is given to the trial court's factual findings, the trial court's determination of legal issues is given no deference. *Id.*

{¶18} Neither Civ.R. 11 nor R.C. 2323.51 require a trial court to conduct a hearing before denying a motion for sanctions "'when the court determines, upon consideration of the motion and in its discretion, that [the motion] lacks merit.'" *Lakeview Holding*, 8th Dist. Cuyahoga No. 98744, 2013-Ohio-1796, ¶ 14, quoting *Pisani v. Pisani*, 101 Ohio App.3d 83, 88, 654 N.E.2d 1355 (8th Dist.1995); *CM Newspapers, Inc. v. Dawson*, 10th Dist. Franklin No. 91AP-1067, 1992 Ohio App. LEXIS 344, 7 (Jan. 28, 1992) ("the specific language of R.C. 2323.51 does not require the trial court to conduct a hearing before denying a motion for sanctions thereunder"). "[W]here the court has sufficient

knowledge of the circumstances for the denial of the requested relief and the hearing would be perfunctory, meaningless, or redundant," a hearing is unnecessary. *Pisani*.

{¶19} Here, Local 310 contends that this court's decision in *CNR Trucking Inc.*, 2013-Ohio-2094, 992 N.E.2d 503, clearly established that the court lacked jurisdiction over Local 18's claims in its 2015 complaint, because Local 18's claims in the 2015 complaint are identical to the claims made in the 2013 complaint. Therefore, according to Local 310, Local 18's claims are effectively barred by res judicata, or stare decisis, and because the claims were groundless, or not warranted under existing law or supported by a good faith argument for modification or reversal of that law, the filing of the 2015 complaint was frivolous.

{¶20} In response, Local 18 submits that its counsel considered whether omitting CNR Trucking from the complaint, as well as its breach of contract claim against the trucking company, would preclude res judicata. In its investigation and research, Local 18 and its counsel determined that only "issue preclusion" (collateral estoppel) may prohibit a second action. Local 18 also determined that new developments cured any jurisdictional defects identified in the first complaint. In support, Local 18 provided that this court's decision in *Norris Bros. Co.*, 8th Dist. Cuyahoga No. 101353, 2015-Ohio-1140, established that for a *Garmon* preemption to apply, two competing unions must make demands for the assignment of an employer's work. Therefore, as Local 18 contends, because it removed CNR Trucking from its complaint, and Local 18

could not seek specific performance from it, there would be no claim for work, and thus, the defect was cured.

{¶21} Stare decisis is a policy of the courts that dictates the adherence to prior judicial decisions. *State v. Thomas*, 8th Dist. Cuyahoga No. 103406, 2016-Ohio-8326, ¶ 12. This doctrine applies "to future cases where the facts of a subsequent case are substantially the same as a former case." *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 5, 539 N.E.2d 103 (1989). It "recognizes that * * * an established legal decision be recognized and followed in subsequent cases where the question of law is again in controversy." *Clark v. Snapper Power Equip., Inc.*, 21 Ohio St.3d 58, 60, 488 N.E.2d 138 (1986). The doctrine is intended for the purpose of ensuring that "'justice [] flows from certainty and stability'"; however, it should be abandoned if adherence to the principle results in unfairness, doubt, and confusion. *Clark v. Southview Hosp. & Family Health Ctr.*, 68 Ohio St.3d 435, 438, 628 N.E.2d 46 (1994), quoting *Bing v. Thunig*, 2 N.Y.2d 656, 667, 163 N.Y.S.2d 3, 143 N.E.2d 3 (1957).

{¶22} Under the doctrine of res judicata, "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995), syllabus. This rule of law includes two concepts: claim preclusion (estoppel by judgment) and issue preclusion (collateral estoppel). *O'Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803, ¶ 6. At issue here is collateral estoppel. Collateral estoppel "serves to

prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies" *Id.* at ¶ 7, citing *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 692 N.E.2d 140 (1998). Collateral estoppel/issue preclusion applies even where the causes of action may differ. *Id.* In order to raise collateral estoppel, the moving party must prove that the nonmoving party was a party, or in privity with a party, to the prior action; there was a final judgment on the merits in the prior action; the operative issue was necessary to the final judgment; and the operative issue in the prior action is identical to the issue in the subsequent action. *Lewis v. Cleveland*, 8th Dist. Cuyahoga No. 95110, 2011-Ohio-347, ¶ 13.

{¶23} Generally, a dismissal for lack of subject matter jurisdiction does not operate as an adjudication on the merits. *Ford Motor Credit Co., L.L.C. v. Collins*, 8th Dist. Cuyahoga No. 101405, 2014-Ohio-5152, ¶ 12, citing Civ.R. 41(B)(4). An exception to this rule, however, exists where the jurisdictional defect cannot be cured. *Lewis* at ¶ 18-19, citing *Diagnostic & Behavioral Health Clinic, Inc. v. Jefferson Cty. Mental Health*, 7th Dist. Jefferson No. 01 JE 5, 2002-Ohio-1567. Thus, res judicata would bar the subsequent action where the jurisdictional defect cannot be cured and a plaintiff files a second cause of action based on the same dispute. *Lewis* at ¶ 20.

{¶24} First, we note that there is no evidence that Local 18's counsel did not read the 2015 complaint, or that counsel filed the complaint for purposes of delay. Rather, the attorney submits that he investigated whether omitting CNR Trucking as a party and

pursuing only a claim of tortious interference against Local 310 would resolve any issues with respect to res judicata. Counsel also submits that he considered how a 2015 decision from this court could cure the alleged jurisdictional defect. After completing the research, counsel filed a complaint solely against Local 310. Here, in denying Local 310's motion for attorney fees, the court implicitly rejected the notion that counsel's actions in filing the 2015 were made in bad faith or willful disregard of Civ.R. 11.

{¶25} We are mindful of the chilling effect applying the sanction remedy can have upon zealous advocacy. *Carr v. Riddle*, 136 Ohio App.3d 700, 706, 737 N.E.2d 976 (8th Dist.2000). And courts must be careful not to deter legitimate claims. *Miller*, 5th Dist. Holmes No. 11CA020, 2012-Ohio-2905, at ¶ 14. As the trial court presided over this matter throughout the litigation, the trial court was in the best position to ascertain counsel's intent and the parties' conduct. Thus, we defer to the trial judge for the determination that attorney fees are not warranted in this case, specifically as it relates to Civ.R. 11.

{¶26} Similarly, we cannot say that the trial court abused its discretion by implicitly concluding that a reasonable lawyer would have brought Local 18's claim after the initial 2013 adjudication. This court based its original affirmance of the dismissal of Local 18's claims in the 2013 complaint, in part, on the fact that Local 18's claims were preempted under the NLRA because Local 18 was seeking specific performance from CNR Trucking and therefore was making a demand for disputed work. *CNR Trucking, Inc.*, 2013-Ohio-2094, 992 N.E.2d 503, at ¶ 17. Thus, the trial court's lack of

jurisdiction was predicated upon the fact that there were claims against CNR Trucking which were preempted by federal law. Here, Local 18's 2015 complaint did not name CNR Trucking as a party, did not seek specific performance, nor seek to obtain disputed work.

{¶27} As previously discussed, res judicata does not apply to preclude a subsequent action involving the same dispute if the jurisdictional defect can be cured. Local 18 asserted that it cured the jurisdictional defect by not re-asserting claims against CNR Trucking or seeking to obtain disputed work through specific performance. These facts were relevant to this court's prior determination that the first complaint was preempted by the NLRA.

{¶28} In this case, the trial court essentially determined that the deletion of the claims and relief sought from CNR Trucking in the current complaint did not cure the jurisdictional defect and the new complaint was again preempted by the NLRA. In denying Local 310's request for sanctions, however, it rejected the notion that no reasonable lawyer would have asserted the claim. Under the circumstances, we cannot conclude that the trial court's finding that a reasonable attorney would have brought the claim was unreasonable, arbitrary, or unconscionable. *See Halliwell*, 8th Dist. Cuyahoga Nos. 76933, 77487, 2000 Ohio App. LEXIS 5896, at 24.

{¶29} In light of the above, we cannot conclude that the trial court's decision was unreasonable, arbitrary, or unconscionable. The trial court therefore did not abuse its

discretion in denying Local 310's request for sanctions based upon Civ.R. 11 and R.C. 2323.51.

{¶30} Local 310's sole assignment of error is overruled.

{¶31} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

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TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J, and
MELODY J. STEWART, J., CONCUR