

motion for expenses of petitioner-appellee, Harvey Christophé Lassiter, and ordering appellant to post bond as a condition to granting her motion to stay the judgment pending appeal.¹ For the reasons discussed below, we affirm the decisions of the trial court.

{¶2} Although this case has a long procedural history, this court will confine itself to the basic facts relevant to this appeal. This case originated in 2007 as a custody dispute between the parties regarding their minor daughter. Both parties appeared pro se. Custody was awarded to appellee and in August 2008, appellant filed what was characterized by the trial court as a motion for relief from judgment and to disqualify the trial court magistrate and the court from presiding over the case. In her motion, appellant claimed that the court and its employees had conspired against her and harbored bias toward her which prejudiced the outcome of the custody matter. After conducting a hearing, the trial court overruled her motion in December 2008. Upon further appeal, we affirmed the trial court's decision in *In re K.A.G-M.* (Aug. 10, 2009), Warren App. No. CA2009-01-003, accelerated calendar judgment entry.

{¶3} Appellee subsequently filed a motion for attorney fees and sanctions against appellant pursuant to Civ.R. 11 and R.C. 2323.51, arguing that appellant's motion was frivolous. The trial court held a hearing on appellee's request, and in its March 5, 2009 decision, found that with the exception of appellant's claim relating to remarks allegedly made about her by a deputy court clerk, her motion for relief from judgment constituted frivolous conduct pursuant to R.C. 2323.51. The court determined that appellee was entitled to an award of expenses in the amount of

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

\$230, but was not entitled to attorney fees as a pro se litigant.

{¶14} Appellant filed a motion to stay the judgment pending appeal, which was granted by the trial court on March 20, 2009 on the condition that appellant post bond of double the amount of the judgment in the amount of \$460.

{¶15} Appellant appeals the March 5 and March 20 decisions of the trial court, raising three assignments of error for our review. Appellant's first and second assignments of error are interrelated, and will be discussed together.

{¶16} Assignment of Error No. 1:

{¶17} "THE TRIAL COURT ERRED, COMMITTING PLAIN ERROR, TO THE PREJUDICE OF APPELLANT IN AWARDING SANCTIONS WITHOUT CONDUCTING A PROPER TRIAL AND WITHOUT MAKING FINDINGS OF LAW/FACT SUPPORTED BY THE EVIDENCE [sic]."

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT IN AWARDING APPELLEE THE AMOUNT OF \$230 IN SANCTIONS."

{¶110} In her first and second assignments of error, appellant essentially contends that the trial court failed to conduct a hearing on appellee's motion for sanctions in accordance with R.C. 2323.51, and further argues that the evidence presented by appellee did not justify the amount of sanctions ordered against her. Appellant asserts that the court's determinations in this regard constituted a "further manifestation of [its] deeply rooted antagonism" toward her. We find these arguments without merit.

{¶111} R.C. 2323.51(B)(1) provides, in part, that a trial court may award court costs, reasonable attorney fees, and other reasonable expenses incurred in

connection with a civil action to a party adversely affected by frivolous conduct. Subsection (A)(2)(a) of the statute defines "frivolous conduct" to include any of the following:

{¶12} "(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.

{¶13} "(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.

{¶14} "(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.

{¶15} "(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."

{¶16} Prior to making an award under R.C. 2323.51, the trial court must hold a hearing to determine whether the conduct was frivolous, whether any party was adversely affected by the frivolous conduct, and the amount of the award, if any award is to be made. See R.C. 2323.51(B). At the hearing, the court must allow the parties to present relevant evidence in support of, or in opposition to such an award. R.C. 2323.51(B)(2)(c); *Siemientkowski v. Moreland Homes, Inc.*, Cuyahoga App. No. 84758, 2005-Ohio-515, ¶13.

{¶17} The decision to impose sanctions pursuant to R.C. 2323.51 lies within the sound discretion of the trial court, and will not be reversed on appeal absent an abuse of discretion. *Lucchesi v. Fischer*, Clermont App. No. CA2008-03-023, 2008-Ohio-5935, ¶4. An abuse of discretion is more than error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "Because the trial judge has the benefit of observing the course of the proceedings and is familiar with the parties and attorneys involved, a reviewing court is obligated to defer to the trial court's findings." *Mason v. Meyers*, 140 Ohio App.3d 474, 477-78, 2000-Ohio-1698, citing *Burrell v. Kassiech* (1998), 128 Ohio App.3d 226. In recognition of that deference, a trial court's judgment finding a party's conduct to be frivolous and awarding sanctions will not be disturbed where the record contains competent, credible evidence to support the court's determination. *Jackson v. Bellomy*, Franklin App. No. 01AP-1397, 2002-Ohio-6495, ¶39, ¶45.

{¶18} Appellant initially contends that she was not afforded an opportunity to present evidence at the hearing regarding whether her motion was frivolous. Appellant did not raise any objection to the trial court regarding this issue. Generally, a party's failure to draw the lower court's attention to a potential error, by objection or otherwise, results in a waiver of the issue for purposes of appeal, unless we find plain error.² *In re Ebenschweiger*, Butler App. No. CA2003-04-080, 2003-Ohio-5990, ¶9-10. Although appellant claims plain error is present in this case, invocation of this

2. Appellant, as a pro se litigant, is bound by the same rules and procedures as members of the bar. See *Cravens v. Cravens*, Warren App. No. CA2008-02-033, 2009-Ohio-1733 at fn.1. Pro se litigants are "not to be accorded greater rights and are bound to accept the results of their own mistakes and errors, including those related to correct legal procedures." *Id.*, quoting *Cat-The Rental Store v. Sparto*, Clinton App. No. CA2001-08-024, 2002-Ohio-614, at 5.

doctrine in civil cases is strictly limited:

{¶19} "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 1997-Ohio-401, syllabus. See, also, *In re Ebenschweiger*, 2003-Ohio-5990 at ¶11.

{¶20} Upon review, we conclude that appellant has failed to demonstrate the existence of plain error, as a review of the record indicates that the trial court afforded both parties the opportunity to present evidence at the hearing regarding their respective positions. Contrary to her argument, there is no indication from the record that the court denied appellant the opportunity to offer evidence regarding whether her motion was frivolous.

{¶21} With regard to the amount of the sanctions imposed, appellee submitted an itemized list of the expenses he incurred in defense of appellant's motion. These included mileage expenses in the amount of \$141.80 for four round trips to the courthouse, a filing fee of \$60, and expenses for transcript and exhibit preparation in the amount of \$141.01. Combined, these expenses totaled \$342.81. As previously discussed, the court determined that with the exception of appellant's claim relating to remarks allegedly made by a deputy court clerk, the remaining claims of bias in her motion for relief from judgment constituted frivolous conduct. The court noted that approximately one-third of the hearing on appellant's motion was devoted to her claim regarding the clerk. In consideration of her legitimate claim,

the court discounted appellee's expenses by one-third and awarded him \$230. Although she disagreed with the amount of the award, appellant indicated to the court that she had no evidence to counter the expenses claimed by appellee.

{¶22} Based upon a close review of the record, we find that the trial court complied with the procedures outlined in R.C. 2323.51 in conducting the hearing on appellee's motion. We further find that the trial court did not abuse its discretion in awarding sanctions to appellee in the amount of \$230, as there was competent, credible evidence presented to the court to support the award.

{¶23} As a result of the foregoing, appellant's first and second assignments of error are overruled.

{¶24} Assignment of Error No. 3:

{¶25} "THE TRIAL COURT COMMITTED PLAIN ERROR AND ARBITRARY AND CAPRICIOUS CONDUCT IN AGREEING TO STAY ITS ORDER ONLY UPON THE CONDITION THAT APPELLANT PAY DOUBLE THE AMOUNT OF THE JUDGMENT RENDERED AGAINST HER [sic]."

{¶26} In her final assignment of error, appellant contends that the trial court erred in staying its sanctions order on the condition that appellant post bond in the amount of \$460. According to appellant, it was a further act of bias for the court to impose bond given her dire financial situation. Appellant cites no legal authority in support of her generalized claim of error.

{¶27} R.C. 2505.09 provides for the minimum amount of bond required to stay execution of a judgment, and requires a sum that is not less than the amount of the judgment plus interest. The statute also requires an appellant to post bond "in a sum * * * as directed by the court that rendered the * * * judgment * * * that is sought to be

superseded." R.C. 2505.09; *Blackburn v. Lauder* (Nov. 12, 1996), Lawrence App. No. 96CA5, 1996 WL 666658 at *8. An appellate court applies an abuse of discretion standard when reviewing a trial court's decision regarding the amount of bond required. *Id.*; *Ohio Carpenters' Pension Fund v. La Centre, LLC*, Cuyahoga App. Nos. 86597, 86789, 2006-Ohio-2214, ¶31.

{¶28} In her motion to stay, appellant did not argue that the imposition of a bond would result in financial hardship or would otherwise overburden her. Although on appeal appellant argues generally that the amount ordered was "exorbitant," the imposition of bond in double the amount of the judgment has been upheld in similar cases involving the stay of sanctions for frivolous conduct. See, e.g., *Blackburn* at *8. Upon review, we do not find that the court's decision with regard to the amount of the bond ordered was arbitrary, unconscionable or unreasonable so as to constitute an abuse of its discretion.

{¶29} Appellant's third assignment of error is overruled.

{¶30} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.