[Cite as *O'Toole v. Hamman*, 2020-Ohio-4753.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

MICHAEL O'TOOLE, :

Plaintiff-Appellee, :

No. 109193

v. :

ROSEMARY O. HAMMAN, ET AL., :

Defendants-Appellants. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 1, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-18-895331

Appearances:

Michael E. Stinn, *for appellees* Michael O'Toole and Colleen Neiden.

Thomas O'Toole, *pro se*.

MARY J. BOYLE, P.J.:

{¶ 1} Appellant, Thomas O'Toole, appeals the trial court's judgment awarding $13,747.10 in sanctions against him for frivolous conduct. Appellant raises two assignments of error for our review:

1. The trial court erred in granting judgment to Appellees, Michael O'Toole and Colleen Neiden, in the amount of $13,747.10 against the Appellant pursuant to R.C. 2323.51 and Ohio Civ. R. 11.

2. The trial court erred in denying the Appellant the right to call witnesses and present a defense to the Appellee[s'] counterclaims and motions.

{¶ 2} Finding no merit to his assignments of error, we affirm the trial court's judgment.

I. Procedural History and Factual Background

{¶ 3} This is the second time appellant has asked this court to reverse a sanctions award against him for frivolous conduct. The first time was an appeal from a probate court proceeding, in which we affirmed the trial court's sanction award against appellant for pursuing baseless arguments that three of his siblings, Michael O'Toole ("Michael"), Colleen Neiden ("Neiden"), and Mary Patricia O'Toole ("Mary Pat"), stole assets from their mother before her death in 2016 and had been hiding assets from her estate. *See In re Estate of O'Toole*, 8th Dist. Cuyahoga No. 108122, 2019-Ohio-4165.

{¶ 4} As the probate proceeding was ongoing, Michael filed a complaint in the Parma Municipal Court against appellant and another sibling, Rosemary O'Toole-Hamman ("Hamman"), in February 2018. The complaint states that appellant and Hamman each owe Michael $1,308.73 for their share of property expenses for their mother's house for the twenty months between when the five siblings (appellant, Michael, Neiden, Mary Pat, and Hamman) inherited the house and when they sold it.

{¶ 5} In March 2018, appellant filed a counterclaim and third-party complaint against Michael, Neiden, and Mary Pat. Appellant claimed that Michael and Mary Pat each had joint and survivor accounts with their mother before her death, and that these accounts should be treated as trusts and part of the estate. He alleged that Michael and Mary Pat used these accounts to launder money and to steal assets from their mother and later her estate. He also claimed that Mary Pat fraudulently induced their mother to "cash in" U.S. Savings Bonds before her death and that Michael, Mary Pat, and Neiden (the administrator of the estate) were now hiding assets from the estate. Appellant brought two claims: (1) breach of fiduciary duty, and (2) unjust enrichment for legal services that appellant, a retired attorney, claimed he provided.[1] He sought $144,000 in compensatory damages, exceeding the jurisdictional limit of the Parma Municipal Court, and the case was transferred to the Cuyahoga County Court of Common Pleas, General Division.

{¶ 6} In the common pleas court, Neiden and Mary Pat filed a counterclaim against appellant, alleging that he was engaging in frivolous conduct in violation of R.C. 2323.51 and Civ.R. 11. The trial court dismissed the portion of the counterclaim pertaining to Civ.R. 11, finding that Civ.R. 11 violations could not be brought as an independent cause of action.

{¶ 7} In February 2019, Michael, Neiden, and Mary Pat filed motions for summary judgment on appellant's claims. A magistrate determined that judgment

[1] In later filings, appellant characterized his claim for breach of fiduciary duty as a claim for tortious interference with expected inheritance, even though the complaint itself does not mention or include the elements of such a claim.

should be granted in their favor. The magistrate found that the trial court lacked subject matter jurisdiction over appellant's first claim because issues regarding the administration of the estate were within the exclusive jurisdiction of the probate court. The magistrate also found that appellant had no evidence to support either of his claims. As to the unjust enrichment claim, the magistrate explained that there was no attorney-client relationship between appellant and his siblings, and appellant cannot "'secretly' represent people and then demand payment of their legal services." The trial court adopted the magistrate's decision, ordered Michael's underlying claim for property expenses to be returned to the Parma Municipal Court, and scheduled a hearing on Neiden and Mary Pat's counterclaim that appellant had engaged in frivolous conduct pursuant to R.C. 2323.51.

{¶ 8} Before the sanctions hearing, Michael filed a motion seeking $17,450 for attorney fees and $3,220.65 for costs pursuant to Civ.R. 11 and R.C. 2323.51. Michael explained that these attorney fees were for legal services performed for Michael, Neiden, and Mary Pat.

{¶ 9} At the sanctions hearing on October 15, 2019, the trial court dismissed Mary Pat's counterclaim because she had passed away in May 2019, and no substitute for her had been made.[2] The trial court heard arguments regarding (1) Neiden's counterclaim pursuant to R.C. 2323.51, and (2) Michael's motion pursuant to Civ.R. 11 and R.C. 2323.51. Michael and Neiden argued that appellant was

[2] The sanctions hearing took place five days after this court released its opinion affirming the probate court's sanctions award against appellant. *In re Estate of O'Toole,* 8th Dist. Cuyahoga No. 108122, 2019-Ohio-4165.

asserting the same frivolous arguments in this case that he made in probate court, and that the probate court had already decided those issues and sanctioned appellant. Michael and Neiden also presented an expert witness, Joseph Shucofsky, who had been a practicing attorney for over 30 years and who was familiar with the rates of legal fees in northeast Ohio. Shucofsky testified that the legal work that Michael and Neiden's attorney performed was necessary, and that the legal fees they incurred were reasonable and much less than he would have expected. Appellant tried to present the same arguments that he advocated during the probate proceeding. The trial court repeatedly stopped him, reminding him that the trial court did not have jurisdiction over those issues. The trial court warned appellant that his continuous assertion of these arguments "could be considered frivolous conduct."

{¶ 10} The trial court granted Michael's motion for sanctions and granted judgment in favor of Neiden on her counterclaim. The trial court determined that appellant's claims were "obviously made to merely harass and injure his siblings; were unwarranted under existing law; lack evidentiary support; and cannot be reasonably based on a lack of information or belief." The trial court explained that the probate court has exclusive jurisdiction over appellant's claims and already adjudicated them. The trial court further reasoned that "objectively and subjectively, no reasonable attorney would have filed" the claims, and that appellant's continual pursuit of the claims adversely affected his siblings. The trial court also found that the attorney fees that Michael and Neiden incurred were

reasonable and "extremely discounted." Because the trial court dismissed Mary Pat's counterclaim, it awarded Michael and Neiden two thirds of their requested fees and expenses: $11,600 in attorney fees and $2,147.10 in costs, for a total of $13,747.10. The trial court further ordered that appellant pay postjudgment interest at a rate of five percent.

{¶ 11} It is from this judgment that appellant timely appeals.

II. Civ.R. 11 and R.C. 2323.51

{¶ 12} In his first assignment of error, appellant argues that the trial court erred in finding that he engaged in frivolous conduct and that the attorney fees Michael and Neiden incurred were reasonable. He repeats his arguments that his siblings stole assets from their mother and later her estate. He maintains that the probate court does not have exclusive jurisdiction over his claim for tortious interference with expectancy of inheritance, citing *Sull v. Kaim*, 172 Ohio App.3d 297, 2007-Ohio-3269, 874 N.E.2d 865 (8th Dist.), for the proposition that the general division of a common pleas court may have jurisdiction over such a claim. He further contends that the attorney fees were not reasonable because Michael was the one to initiate the lawsuit, and the trial court would not permit appellant to "inquire into the issue" of whether the fees were reasonable. Michael and Neiden argue that they met their burden of showing that appellant's counterclaim and third-party complaint were frivolous because appellant had no factual or legal bases to assert his claims.

{¶ 13} Ohio law provides two separate mechanisms for an aggrieved party to recover attorney fees for frivolous conduct: R.C. 2323.51 and Civ.R. 11. *Sigmon v. S.W. Gen. Health Ctr.*, 8th Dist. Cuyahoga No. 88276, 2007-Ohio-2117, ¶ 14. Although both authorize the award of attorney fees as a sanction for frivolous conduct, they have separate standards of proof and differ in application. *Id.* In this case, Michael brought his motion for sanctions against appellant under both Civ.R. 11 and R.C. 2323.51, and Neiden brought her counterclaim under R.C. 2323.51.

{¶ 14} Both R.C. 2323.51 and Civ.R. 11 allow for the imposition of sanctions against a pro se litigant. *See Burrell v. Kassicieh*, 128 Ohio App.3d 226, 231-232, 714 N.E.2d 442 (3d Dist.1998) (upholding trial court's sanctions against pro se litigant under Civ.R. 11 and R.C. 2323.51). Under Ohio law, pro se litigants are held to the same standard as all other litigants; that is, they must comply with the rules of procedure and must accept the consequences of their own mistakes. *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (8th Dist.1996). The fact that a party is pro se does not shield the party from sanctions when the party engages in frivolous conduct. *Burrell* at 232. Indeed, a court's refusal to hold a pro se litigant to the same standard as an attorney who engages in frivolous and egregious conduct would defeat the purpose of R.C. 2323.51 and Civ.R. 11: to deter vexatious and harassing litigation. Thus, appellant is subject to sanctions for frivolous conduct even though he is no longer a licensed attorney.

{¶ 15} Civ.R. 11 governs the signing of pleadings, motions, and other documents and provides in pertinent part that:

> The 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. Similar action may be taken if scandalous or indecent matter is inserted.

{¶ 16} In deciding whether a violation under Civ.R. 11 was willful, the trial court must apply a subjective bad-faith standard. *Riston v. Butler*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, ¶ 12 (1st Dist.). The Ohio Supreme Court has described "bad faith" as

> a general and somewhat indefinite term. It has no constricted meaning. It cannot be defined with exactness. It is not simply bad judgment. It is not merely negligence. It imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will. It partakes of the nature of fraud. * * * It means "with actual intent to mislead or deceive another."

Slater v. Motorists Mut. Ins. Co., 174 Ohio St. 148, 151, 187 N.E.2d 45 (1962), *overruled on other grounds, Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 644 N.E.2d 397 (1994).

{¶ 17} The decision to grant sanctions under Civ.R. 11 rests within the sound discretion of the trial court. *Grimes v. Oviatt*, 8th Dist. Cuyahoga No. 104491, 2017-

Ohio-1174, ¶ 27, citing *Taylor v. Franklin Blvd. Nursing Home, Inc.*, 112 Ohio App.3d 27, 31, 677 N.E.2d 1212 (8th Dist.1996); *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073, 937 N.E.2d 1274, ¶ 9. Thus, a reviewing court will not reverse a trial court's decision denying or granting sanctions under Civ.R. 11 absent an abuse of discretion. *Jurick v. Jackim*, 8th Dist. Cuyahoga No. 89997, 2008-Ohio-2346, ¶ 6.

{¶ 18} A motion for sanctions under R.C. 2323.51 requires a trial court to determine whether the challenged conduct constitutes frivolous conduct as defined in the statute, and, if so, whether any party has been adversely affected by the frivolous conduct. *Riston* at ¶ 17. R.C. 2323.51 applies an objective standard in determining frivolous conduct, as opposed to a subjective one. *Bikkani v. Lee*, 8th Dist. Cuyahoga No. 89312, 2008-Ohio-3130, ¶ 22. The finding of frivolous conduct under R.C. 2323.51 is determined without reference to what the individual knew or believed. *Ceol v. Zion Industries, Inc.*, 81 Ohio App.3d 286, 289, 610 N.E.2d 1076 (9th Dist.1992).

{¶ 19} R.C. 2323.51(A)(2)(a) defines "frivolous conduct" as conduct that satisfies any of the following categories:

> (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.
>
> (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).

{¶ 20} R.C. 2323.51 was not intended to punish mere misjudgment or tactical error. *Turowski v. Johnson*, 70 Ohio App.3d 118, 123, 590 N.E.2d 434 (9th Dist.1991). Instead, the statute was designed to chill egregious, overzealous, unjustifiable, and frivolous action. *Turowski v. Johnson*, 68 Ohio App.3d 704, 706, 589 N.E.2d 462 (9th Dist.1990). The statute serves to deter abuse of the judicial process by penalizing sanctionable conduct that occurs during litigation. *Filonenko v. Smock Constr., L.L.C.*, 10th Dist. Franklin No. 17AP-854, 2018-Ohio-3283, ¶ 14.

{¶ 21} An R.C. 2323.51 determination to impose sanctions involves a mixed question of law and of fact. *Resources for Healthy Living, Inc. v. Haslinger*, 6th Dist. Wood No. WD-10-073, 2011-Ohio-1978, ¶ 26. We review purely legal questions de novo. *Riston*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, at ¶ 22. Whether a claim or defense is legally groundless is a question of law. *Id.* The test is whether no reasonable lawyer would have raised the claim or defense in light of existing law. *Pitcher v. Waldman*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, ¶ 15. On factual issues, however, we give deference to the trial court's factual determinations because the trial judge, of course, will have had the benefit of observing the entire course of proceedings and will be most familiar with the parties

and attorneys involved. *Riston* at ¶ 25. The ultimate decision as to whether to grant sanctions under R.C. 2323.51 rests within the sound discretion of the trial court. *Id*. at ¶ 27; *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, 957 N.E.2d 19, ¶ 11.

{¶ 22} The trial court did not abuse its discretion in awarding sanctions against appellant for a willful violation of Civ.R. 11 and frivolous conduct pursuant to R.C. 2323.51(A)(2)(a)(i), (ii), and (iii). The record reflects that appellant was trying merely to harass Michael, Neiden, and Mary Pat, appellant's claims were unwarranted under existing law, and appellant had no evidentiary support for his claims. When appellant filed his claims in March 2018, months earlier in December 2017, the probate court had already found that there was no evidence (1) that Neiden had breached her fiduciary duties as administrator of the estate, (2) that his siblings engaged in money laundering, (3) that the joint and survivor bank accounts were "constructive trusts" and should have been included in the estate, and (4) that assets were being hidden from appellant and the estate. *See In re Estate of O'Toole*, 8th Dist. Cuyahoga No. 108122, 2019-Ohio-4165, at ¶ 10-14. Nor did appellant put forth any evidence to support his allegations in the proceeding underlying the current appeal. Appellant also had no contract for legal services with his siblings and therefore had no grounds to charge them for attorney fees. We also agree with the trial court that no reasonable lawyer would have raised appellant's claims, and appellant could only have done so in bad faith.

{¶ 23} Appellant's contention that the trial court had jurisdiction over his claim for breach of fiduciary duty (which he characterized as tortious interference with expectancy of inheritance) is incorrect. The probate court has exclusive jurisdiction over matters relating to an estate's administration and the distribution of its assets. R.C. 2101.24(A)(1)(c); *Grimes v. Grimes*, 173 Ohio App.3d 537, 2007-Ohio-5653, 879 N.E.2d 247, ¶ 17 (4th Dist.); *Goff v. Ameritrust Co., N.A.*, 8th Dist. Cuyahoga Nos. 65196 and 66016, 1994 Ohio App. LEXIS 1916, 12 (May 5, 1994); *see Patterson v. Church*, 8th Dist. Cuyahoga No. 99159, 2013-Ohio-1906, ¶ 10, 23 (common pleas court lacked subject matter jurisdiction over the plaintiff's claims for tortious interference with expectancy of inheritance because the probate court had exclusive jurisdiction).

{¶ 24} Appellant's reliance on *Sull*, 172 Ohio App.3d 297, 2007-Ohio-3269, 874 N.E.2d 865, is misplaced. The defendant in *Sull* argued that the plaintiffs could not establish an expectancy of inheritance without a determination from the probate court that the will at issue in the case was valid. Because nobody challenged the validity of the will, this court held that the plaintiffs did not need to obtain such a determination, and the claim for intentional interference with expected inheritance did not fall within the probate court's exclusive jurisdiction. *Id.* at ¶ 9. Here, however, appellant's first claim is based on allegations related to the administration of his mother's estate and the distribution of her assets, which fall squarely within the probate court's exclusive jurisdiction. Furthermore, even if the trial court had

jurisdiction over appellant's first cause of action, we agree with the trial court that appellant still did not have any evidence to support his allegations.

{¶ 25} Appellant's arguments that Michael and Neiden failed to show that the attorney fees they incurred were reasonable also lack merit. Michael and Neiden presented invoices reflecting the legal fees they incurred and an expert witness to establish that the fees were reasonable. Even though Michael filed the initial complaint in this matter, appellant's frivolous conduct created the need for additional legal services and fees. And contrary to appellant's contention, the trial court did permit appellant to "inquire into the issue" of the reasonableness of the attorney fees by providing him an opportunity to cross-examine the expert witness and to present his own evidence.

{¶ 26} Appellant has failed to offer any evidence or argument to establish that the trial court erred or abused its discretion when it awarded sanctions against him. Accordingly, we overrule appellant's first assignment of error.

III. Appellant's Presentation of a Defense

{¶ 27} In his second assignment of error, appellant argues that the trial court improperly prevented him from calling witnesses in his defense at the sanctions hearing. Appellant maintains that Michael and Neiden stated off the record that they would use appellant's share of his inheritance to pay attorney fees incurred in this litigation, appellant might therefore have already been paying for their attorney fees, and that the allegations of frivolous conduct against him are "a ruse" to run up attorney fees and spend his share of inheritance. Michael and Neiden argue that

appellant cross-examined their expert witness. They further contend that appellant chose not to call any witnesses of his own, examine their attorney, or proffer into the record what witnesses he would have called if given another opportunity.

{¶ 28} "It is well settled that a trial court has broad discretion to control its proceedings to enable it to exercise its jurisdiction in an orderly and efficient manner." *M.D. v. M.D.*, 2018-Ohio-4218, 121 N.E.3d 819, ¶ 54 (8th Dist.). "[W]e review a trial court's decisions regarding the admission of evidence for an abuse of discretion." *State v. Robinson*, 8th Dist. Cuyahoga No. 99917, 2014-Ohio-2973, ¶ 23. An abuse of discretion occurs when the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Marketing Assocs. v. Gottlieb*, 8th Dist. Cuyahoga No. 92292, 2010-Ohio-59, ¶ 47.

{¶ 29} At the sanctions hearing, the trial court gave appellant an opportunity to present a defense. But appellant did not call any witnesses or submit any evidence on his behalf. The only arguments appellant made were attempts to reassert his claims that his siblings were stealing from their mother's estate, even though the trial court had already resolved those claims on summary judgment. Only after the trial court found in favor of Michael and Neiden did appellant seek to "put on a case on [his] behalf" and address which legal "fees were associated with what conduct." The trial court first responded that it would not allow appellant to continue to relitigate the case, but then agreed to hold another hearing and asked appellant who he wanted to call as witnesses. In response, appellant raised previous discovery disputes and claimed that Michael and Neiden may have paid their attorney fees

from his share of inheritance. The trial court observed that appellant "want[ed] to re-litigate the whole case again," reminded appellant that he already had an opportunity during the hearing to "put on a case," and changed its mind about holding another hearing.

{¶ 30} We are not persuaded by appellant's argument that he is entitled to a second opportunity to "put on a case" because Michael and Neiden might be spending his inheritance to pay their legal fees. This is the type of unsupported allegation that resulted in the sanctions against him. The trial court already gave appellant an opportunity to "put on a case," and appellant has not identified any witnesses or evidence he would present if given a second opportunity. Accordingly, we find that the trial court did not abuse its discretion, and we overrule appellant's second assignment of error.

{¶ 31} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR