[Cite as *Rossi Personalty Revocable Living Trust v. Keehan*, 2025-Ohio-2694.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ASSUNTA ROSSI PERSONALTY REVOCABLE LIVING TRUST,	:	
Plaintiff-Appellee,	:	No. 114291
v.	:	
D.J. KEEHAN, ET AL.,	:	
Defendants-Appellants.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 31, 2025

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-21-944483

Appearances:

Shapero & Green LLC and James A. Marx, *for appellees*.

Stephen P. Hanudel, *for appellants*.

WILLIAM A. KLATT, J.:

{¶ 1} Defendants-appellants D.J. Keehan ("Keehan"), Westlake Shadow Creek, LLC ("Westlake"), Signature Building Concepts, LLC ("Signature"), and Online Communications, LLC ("Online") (collectively, "Defendants" or

"Appellants") appeal from the trial court's July 25, 2024 judgment entry denying their motion for sanctions. For the following reasons, we affirm.

Factual and Procedural History

{¶ 2} On February 26, 2021, Assunta Rossi Personalty Revocable Living Trust ("the Trust"), Assunta Rossi personally and as trustee ("Rossi"), and Robert V. Traci ("Traci") (collectively, "Plaintiffs" or "Appellees") filed a pro se complaint against Keehan and Westlake related to a 2019 contract for the construction and purchase of a condominium in Westlake, Ohio.[1] The complaint alleged breach of contract, breach of warranty, negligence, and fraud, and further alleged that Keehan was personally liable for these claims under alter ego liability.

{¶ 3} In December 2019, the parties entered into a contract for the construction and purchase of a condominium in Westlake; the contract listed the condominium price at $370,000. As is standard in many housing contracts, the contract contained set allowances for various finishes and provided that any costs in excess of the allowance were to be paid by the buyer (Plaintiffs). The contract listed the estimated completion date as March 15, 2020, but stated that the completion date was not of the essence.

{¶ 4} The condominium was completed in the fall of 2020. Appellees claimed that Appellants caused the delay by failing to respond to Appellees and failing to order materials in a timely manner. Appellants claimed that Appellees

[1] Both Rossi and Traci were licensed attorneys. Traci represented Plaintiffs pro se at the trial-court level because his law license was inactive at the time the complaint was filed.

caused the delay by failing to choose fixtures in a timely manner and frequently changing their mind. The following year, Appellees sold the unit for $430,000.

{¶ 5} On April 29, 2021, Keehan and Westlake filed a motion to dismiss pursuant to Civ.R. 12(B)(6), based largely on the fact that the complaint appeared to be missing several pages. On May 4, 2021, Appellees filed a response to the Civ.R. 12(B)(6) motion and a motion to amend their complaint instanter due to clerical error. The trial court granted Appellees' motion to amend the complaint and denied the motion to dismiss as moot.

{¶ 6} On May 22, 2021, Keehan and Westlake filed a motion to dismiss the amended complaint and a motion for a protective order to stay discovery. On May 24, 2021, Appellees filed a brief in opposition to the motion for protective order and a motion for sanctions. On May 26, 2021, Appellees filed a brief in opposition to the motion to dismiss the amended complaint. The same day, Keehan and Westlake filed a response to Appellees' motion for sanctions. During a June 21, 2021 case-management conference, Appellees orally withdrew their motion for sanctions.

{¶ 7} On July 8, 2021, the court denied Keehan and Westlake's motion to dismiss the amended complaint.

{¶ 8} On July 20, 2021, Keehan and Westlake filed an answer to the amended complaint, together with a counterclaim and third-party complaint for declaratory judgment. The counterclaim alleged that Westlake was entitled to $5,000 held in escrow with Chicago Title pursuant to an October 26, 2020 escrow agreement with the Trust and Chicago Title. The escrow agreement provided that

$2,000 would be held until Westlake finished the condominium's foyer staircase and $3,000 would be held until Westlake completed seven line items listed in the agreement. Chicago Title was named as a third-party defendant and subsequently dismissed from the case after interpleading $5,000 to the trial court.

{¶ 9} On August 1, 2021, Appellees filed an answer to the counterclaim.

{¶ 10} On November 7, 2021, Appellees filed a motion to amend the complaint instanter. On December 17, 2021, the trial court granted the motion and deemed Appellees' second amended complaint filed as of that date. The second amended complaint named Signature and Online as new party defendants.[2] On January 14, 2022, Appellants filed an answer to the second amended complaint.

{¶ 11} On February 28, 2022, Appellants filed a motion to dismiss, and on March 11, 2022, Appellees filed a brief in opposition. On March 28, 2022, the court denied Appellants' motion to dismiss.

{¶ 12} On April 11, 2022, Signature and Online filed an answer to the second amended complaint.

{¶ 13} On May 9, 2022, Appellants filed a motion for summary judgment, and on July 26, 2022, Appellees filed a brief in opposition. On August 2, 2022, Appellants filed a reply brief in support of their motion for summary judgment.

{¶ 14} On November 4, 2022, the trial court granted Appellants' motion for summary judgment as to Appellees' claims for fraud and alter ego liability and

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[2] The complaint also named David Keehan (Keehan's brother) and GH Holdings, LLC as new-party defendants but they were later dismissed and are irrelevant to this appeal.

denied the motion for summary judgment as to all other claims. On November 17, 2022, Appellees moved for reconsideration of the trial court's decision. On December 12, 2022, the trial court held a hearing on the motion for reconsideration. On February 10, 2023, the trial court issued an opinion denying Appellees' motion for reconsideration.

{¶ 15} Appellees appealed the summary judgment ruling to this court. This court dismissed the appeal for lack of a final, appealable order. *Assunta Rossi Personalty Revocable Living v. Keehan*, 2023-Ohio-3710 (8th Dist.). The case was returned to the trial court, where the parties resumed pretrial proceedings and discovery. Both before and after the first appeal, the pretrial process in this case was lengthy and involved numerous discovery disputes the parties were unable to resolve, leading to numerous motions to compel or prevent certain discovery.

{¶ 16} On January 30, 2024, Appellees filed a motion for summary judgment on Westlake's counterclaim, and on February 28, 2024, Appellants filed a brief in opposition. On March 6, 2024, Appellees filed a reply brief in support of their motion for summary judgment.

{¶ 17} On March 27, 2024, the trial court granted in part and denied in part Appellees' motion for summary judgment. Specifically, the court held that Westlake was obligated to repair the foyer staircase, did not do so, and accordingly was not entitled to have the $2,000 held in escrow for the staircase repairs released to Westlake. The court also held that because the parties submitted competing affidavits related to the remaining line items for completion, genuine issues of

material fact remained regarding whether Westlake was entitled to release of the $3,000 held in escrow related to those items.

{¶ 18} On May 23, 2024, Appellants filed a motion for sanctions pursuant to Civ.R. 11 and R.C. 2323.51. On May 24, 2024, Appellants filed a motion to substitute a party, seeking to substitute plaintiff Traci with the administrator of Traci's estate. On May 31, 2024, Appellees filed briefs in opposition to the motion to substitute and the motion for sanctions.

{¶ 19} On June 3, 2024, the court issued a journal entry denying Appellants' motion to substitute. The court stated, in relevant part:

> This matter is set for trial on 06/10/2024. Civ.R. 6(C)(2) provides that motions for purposes of a trial shall be served no later than 28 days prior to the start of trial, unless good cause is shown for a later filing.
>
> Defendants' motion was filed 17 days before trial in violation of Civ.R. 6(C)(2) and did not set forth good cause for their untimely filing.
>
> Moreover, Civ.R. 25(E) provides "upon the death or incompetency of a party it shall be the duty of the attorney of record for that party to suggest such fact upon the record within fourteen days after the attorney acquires actual knowledge of the death or incompetency of that party. The suggestion of death or incompetency shall be served on all other parties as provided in Civ.R. 5." Once the death is suggested on the record, the parties have 90 days to move to substitute a party for the decedent. Civ.R. 25(A). Failure to do so, shall result in dismissal of the deceased party.
>
> In the case at hand, the parties agree that Robert Traci passed away on 10/08/2023. Plaintiff's motion for summary judgment, filed 01/30/2024 stated "as the court was informed at the recently held [January 8, 2024] status conference, [Traci] died prior to this case being reinstated to the court's docket; hence, he is no longer a party to this action." The Tenth District has found that, a trial court's entry noting the death of a party is sufficient to put all parties on notice of the death and triggers the 90 day period to move to substitute a party, suggesting that no specific form of notice must be used. *Price v.*

> *Parker*, 2000 Ohio App. LEXIS 856, *21, 2000 WL 256176. Therefore, plaintiff's counsel's 01/30/2024 filing on the record, which was properly served on opposing parties, was a suggestion of Traci's death on the record sufficient to put defendants on notice of the death.
>
> Based on the foregoing the motion to substitute is denied. The court finds that the motion is untimely and defendants have failed to show good cause why an extension is warranted. Moreover, more than 90 days have passed between the suggestion of Traci's death on the record, and the filing of defendant's motion. Accordingly, all claims by and against Robert Traci are dismissed without prejudice.

{¶ 20} On June 6, 2024, Appellees filed a notice of voluntary dismissal of all claims. On June 7, 2024, the court issued the following journal entry:

> Telephone conference held 06/07/2024. All parties appeared through counsel and informed the court that the case has settled. Pursuant to Plaintiff's unopposed notice to release remaining escrow funds to Westlake Shadow Creek, filed 06/06/2024, and by agreement of the parties, the remaining $3,000 held in escrow is hereby ordered released to Defendant and Counterclaim-Plaintiff, Westlake Shadow Creek, LLC ("WSC"). Accordingly, this case is hereby removed from the court's active docket. The court retains jurisdiction over this matter until a final notice of dismissal has been received. Court cost assessed as directed. Notice issued.

The same day, the trial court issued a journal entry stating that all claims were dismissed without prejudice.

{¶ 21} On June 24, 2024, Westlake filed a notice of dismissal of their counterclaim. On June 25, 2024, the court issued a journal entry stating:

> Upon notice from Defendant/Counterclaim-Plaintiff Westlake Shadow Creek, LLC ("WSC"), effective as of 06/24/2024, WSC's counterclaim is voluntarily dismissed with prejudice. No claims remain. This court retains jurisdiction over all post-judgment motions and to enforce the terms of settlement. Court costs assessed as each their own. Pursuant to Civ.R. 58(B), the clerk of courts is directed to serve this judgment in a manner prescribed by Civ.R. 5(B). The clerk must indicate on the docket the names and addresses of all parties, the method of service, and the costs associated with this service. Notice issued.

{¶ 22} On July 5, 2024, Appellants filed two motions: (1) a motion for sanctions pursuant to Civ.R. 11 and R.C. 2323.51 and (2) a motion to substitute plaintiff Traci with the administrator of Traci's estate. Appellants argued in their motion for sanctions that the Appellees engaged in overly aggressive discovery tactics and that the underlying case was merely a fishing expedition to obtain information about Appellants that was not directly relevant to their claims. Further, the motion for sanctions asked that any sanctions liability that would be assigned to Traci if he were still alive be assigned to Traci's estate.

{¶ 23} On July 10, 2024, Appellees filed a brief in opposition to the motion to substitute a party. On July 12, 2024, Appellees filed a brief in opposition to the motion for sanctions. Appellants filed reply briefs in support of both motions.

{¶ 24} On July 21, 2024, the trial court denied Appellants' motion to substitute, stating:

> This court previously denied Defendants' motion to substitute plaintiff Robert Traci with Assunta Rossi, Administrator of the Estate of Robert V. Traci, deceased on 06/03/2024. The refiled motion does not contain new facts or arguments which would compel the court to reconsider that order. Accordingly, Defendants' motion to substitute is denied.

{¶ 25} On July 25, 2024, the trial court denied Appellants' motion for sanctions, stating in relevant part:

> A party or their counsel may be sanctioned for frivolous conduct if their conduct (i) obviously serves merely to harass or maliciously injure another party or is for another improper purpose, (ii) 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, or (iii) consists of allegations or other factual contentions that have no

> evidentiary support. R.C. 2323.51(A)(2). The frivolous conduct is only sanctionable if it is egregious, overzealous, or unjustifiable. *Mrn Ltd. Partnership v. Gamage*, 2023-Ohio-4541, P25. . . . Frivolous conduct is not proved merely by winning a legal battle or by proving that a party's factual assertions were incorrect. *Id.* Moreover, Civ.R. 11 provides "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." Willful violation of the rule can be sanctionable conduct. *Id.* "R.C. 2323.51(B)(2) requires an evidentiary hearing before granting an award but does not address whether an evidentiary hearing is required before denying the award. Although a hearing is not explicitly required by R.C. 2323.51, this court has held that "'[i]f an arguable basis exists for an award of sanctions, then the trial court must hold a hearing on the issue.'" However, a hearing on a motion for sanctions is not required 'where the court has sufficient knowledge of the circumstances for the denial of the requested relief and the hearing would be perfunctory, meaningless, or redundant.'" *Mrn Ltd. Partnership v. Gamage*, 2023-Ohio-4541, P25. . . . The court previously denied Defendant's motion to substitute plaintiff Robert Traci with Assunta Rossi, Administrator of the Estate of Robert V. Traci, deceased on 06/03/2024. On 07/21/2024 the court denied Defendant's renewed motion to substitute Plaintiff Robert Traci with Assunta Rossi, Administrator of the Estate of Robert V. Traci. Accordingly, to the extent the motion seeks sanctions against Traci's estate, the motion is denied as Traci's estate is not a party to this action. Further, the court has had extensive interactions with the parties in this matter and has sufficient knowledge of the circumstances that form the basis of defendant's request for relief that it is clear to the court that a hearing would be perfunctory, meaningless, and redundant. Based on the foregoing analysis, and taking into consideration the briefings and the court's knowledge of the circumstances that form the basis for relief, Defendant's motion for sanctions is denied.

{¶ 26} On August 23, 2024, Appellants filed a timely notice of appeal from the trial court's July 25, 2024 judgment entry denying their second motion for sanctions. They now raise two assignments of error for our review:

I. The trial court erred by denying Defendants' motion for sanctions.

II. The trial court erred by denying Defendants' motion to substitute party.

{¶ 27} On December 31, 2024, prior to filing their appellate brief, Appellees filed a motion for partial dismissal of the appeal and/or to strike Appellants' second assignment of error ("motion for partial dismissal"). Appellees argued that the second assignment of error, challenging the trial court's denial of Appellants' motion to substitute party, challenges and seeks to reverse a judgment entry from which Appellants did not properly appeal. On January 7, 2025, Appellees also filed a motion to strike the transcript of proceedings filed by Appellants on November 4, 2024.

{¶ 28} On January 10, 2025, Appellants filed a brief in opposition to Appellees' motion for partial dismissal.

{¶ 29} On January 15, 2025, Appellees filed a reply brief in support of their motion for partial dismissal. On January 17, 2025, Appellants filed a response in opposition to Appellees' motion to strike the transcript.

{¶ 30} On January 24, 2024, this court denied Appellees' motion to strike the transcript and referred Appellees' motion for partial dismissal to this panel for review. Appellees subsequently filed their appellate brief.

Law and Analysis

I. Motion for Sanctions

{¶ 31} In Appellants' first assignment of error, they argue that the trial court erred by denying their second motion for sanctions because Appellees violated R.C. 2323.51 and Civ.R. 11. Specifically, Appellants argue that the Appellees engaged in

overly aggressive discovery tactics and that the underlying case was merely a fishing expedition to obtain information about Appellants that was not directly relevant to their claims.

{¶ 32} A decision to grant or deny sanctions under R.C. 2323.51 and Civ.R. 11 rests within the sound discretion of the trial court. *MRN Ltd. Partnership v. Gamage*, 2023-Ohio-4541, ¶ 20 (8th Dist.), citing *Walters v. Carter*, 2020-Ohio-807, ¶ 17 (8th Dist.). An abuse of discretion occurs when a court exercises "its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. Absent an abuse of discretion, a reviewing court will not reverse a trial court's decision to grant or deny sanctions. *Walters* at ¶ 17, citing *Grimes v. Oviatt*, 2017-Ohio-1174, ¶ 20 (8th Dist.) The trial court is not required to conduct a hearing before ruling on a motion for sanctions so long as the court has sufficient knowledge of the underlying facts and circumstances. *Id.*, citing *Internatl. Union of Operating Engineers, Local 18 v. Laborers' Internatl. Union of N. Am., Local 310*, 2017-Ohio-1055, ¶ 18 (8th Dist.).

{¶ 33} Ohio law provides two separate mechanisms for an aggrieved party to seek attorney fees for frivolous conduct: R.C. 2323.51 and Civ.R. 11. *Walters* at ¶ 13, citing *In re Estate of O'Toole*, 2019-Ohio-4165, ¶ 22 (8th Dist.).

{¶ 34} Civ.R. 11 governs the signing of pleadings and states, in relevant part:

> 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. . . . 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.

{¶ 35} Trial courts determining whether a violation of Civ.R. 11 is willful apply a subjective bad-faith standard. *Gamage* at ¶ 21, citing *Grimes*, 2017-Ohio-1174, at ¶ 24 (8th Dist.), citing *Riston v. Butler*, 2002-Ohio-2308, ¶ 12 (1st Dist.).

{¶ 36} Under R.C. 2323.51, a trial court may award attorney fees to a party aggrieved by frivolous conduct in a civil action. *Walters*, 2020-Ohio-807, at ¶ 13 (8th Dist.), citing *Grimes* at ¶ 18. R.C. 2323.51 defines frivolous conduct as conduct that satisfies the following:

> 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.
>
> 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.
>
> 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.
>
> 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).

{¶ 37} Further, the Ohio Supreme Court has stated that frivolous conduct under R.C. 2323.51(A)(2)(a) "'must involve egregious conduct.'" *Taylor v. BASF*

Catalysts, LLC, 2023-Ohio-1136, ¶ 62 (8th Dist.), quoting *State ex rel. DiFranco v. S. Euclid*, 2015-Ohio-4915, ¶ 15. "'Frivolous conduct is not proved merely by winning a legal battle or by proving that a party's factual assertions were incorrect.'" *Id.*, citing *Ohio Power Co. v. Ogle*, 2013-Ohio-1745, ¶ 29-30 (4th Dist.).

{¶ 38} To determine whether a claim is frivolous under R.C. 2323.51, courts apply an objective standard without reference to what the individual knew or believed. *Walters* at ¶ 14, citing *ABN Amro Mtge. Group, Inc. v. Evans*, 2013-Ohio-1557, ¶ 18 (8th Dist.). "The test is whether no reasonable attorney would have filed the action based upon the existing law." *Id.*

{¶ 39} A determination to impose sanctions under R.C. 2323.51 involves a mixed question of law and fact. *Thomas v. Murry*, 2021-Ohio-206, ¶ 39 (8th Dist.), citing *Resources for Healthy Living, Inc. v. Haslinger*, 2011-Ohio-1978, ¶ 26 (6th Dist.). While we review questions of law de novo, on factual issues "'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.'" *Id.*, quoting *In re Estate of O'Toole*, 2019-Ohio-4165, at ¶ 30 (8th Dist.).

{¶ 40} In their motion for sanctions, Appellants asserted that Appellees engaged in overly aggressive discovery tactics and that Traci repeatedly made false accusations and personal insults against Keehan and his counsel. Appellants further asserted that Appellees used their multiple depositions of Keehan to discover alleged fraud rather than to question him about their breach-of-contract claim. Appellants

argue that throughout the underlying litigation, Appellees were unable to articulate exactly how Appellants breached the contract.

{¶ 41} Our review of the record reflects that Appellees alleged that Appellants breached the construction contract in several ways: by violating express and implied promises to act in good faith; violating warranties to perform in a workmanlike manner; failing to timely meet and complete occupancy timelines and completion dates; failing to comply with applicable laws and ordinances; and utilizing workers who were in many cases inexperienced and not licensed or certified to perform the work for which they were contracted. Moreover, Appellees asserted that because of the construction delays, they incurred the costs of storing their possessions and staying at a hotel. Our review of the record also reflects that Appellees' claims survived multiple dispositive motions before the case was ultimately resolved.

{¶ 42} Further, while Appellants argue that Traci and, by extension, Rossi, engaged in aggressive conduct throughout the underlying litigation, our review of the record does not support Appellants' claim that Appellees engaged in frivolous conduct as defined by R.C. 2323.51(A)(2)(a)(i) through (iv). Moreover, the trial court has had extensive interactions with the parties in this matter and has sufficient knowledge of the circumstances that formed the basis of the motion for sanctions. Specifically, the trial court presided over the lengthy pretrial proceedings and numerous discovery disputes that Appellants cited to in their motion for sanctions.

As such, we are obligated to give significant deference to the trial court's factual determinations related to the motion for sanctions.

{¶ 43} While our review of the record reflects protracted and contentious litigation, marked by numerous discovery disputes, contentious litigation and arguably disagreeable behavior does not automatically entitle a party to sanctions.

{¶ 44} Finally, in support of their arguments, Appellants point to a case in which this court held that the trial court abused its discretion in denying a motion for sanctions where there was overwhelming evidence of egregious conduct throughout the litigation. *Bikkani v. Lee*, 2008-Ohio-3130 (8th Dist.). In *Bikkani*, in addition to the appellant's assertion that the appellee had engaged in egregious conduct, the record clearly supported a finding of frivolous conduct where the plaintiff-appellee refused to dismiss claims that were time-barred or for which he lacked standing, and he blatantly disregarded discovery orders. *Id.* at ¶ 33 and 35.

{¶ 45} Appellants, as the movants, bore the burden of proving that sanctions were warranted under either R.C. 2323.51 or Civ.R. 11. *Taylor*, 2023-Ohio-1136, at ¶ 79 (8th Dist.). We cannot conclude that they met this burden. Based on our review of the record, we cannot conclude that no reasonable lawyer would have brought this case in light of existing law. *Marconi v. Savage*, 2016-Ohio-289, ¶ 37 (8th Dist.), citing *Sigmon v. Southwest Gen. Health Ctr.*, 2007-Ohio-2117, ¶ 14 (8th Dist.). The circumstances of this case do not appear to reflect sanctionable conduct under a subjective willfulness standard pursuant to Civ.R. 11 or under an objective standard of egregious conduct pursuant to R.C. 2323.51. Thus, we are unable to

conclude that the trial court abused its discretion in denying Appellants' second motion for sanctions without a hearing. For these reasons, Appellants' first assignment of error is overruled.

II. Motion to Substitute

{¶ 46} In Appellants' second assignment of error, they argue that the trial court erred when it denied their second motion to substitute a party. Specifically, Appellants argue that because Appellees did not comply with Civ.R. 25(E) when they "notified" the court of Traci's death via a footnote in their motion for summary judgment, Appellants were not bound by the 90-day requirement in Civ.R. 25(A)(1) to move to substitute Traci upon his death.

{¶ 47} As an initial matter, we note that according to the second motion for sanctions, Appellants filed the motion to substitute to ensure that their claims against Traci's estate — specifically, the claims made in their second motion for sanctions — are properly preserved.

{¶ 48} In light of our conclusion in Appellants' first assignment of error that the trial court did not abuse its discretion in denying their second motion for sanctions, the issue of whether the trial court properly denied their second motion to substitute is rendered moot.

{¶ 49} Accordingly, Appellees' motion for a partial dismissal and/or to strike the second assignment of error is denied as moot given our resolution of Appellants' first assignment of error.

{¶ 50} Judgment affirmed.

It is ordered that appellees recover from appellants 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.

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WILLIAM A. KLATT, JUDGE*

DEENA R. CALABRESE, J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS IN JUDGMENT ONLY (WITH SEPARATE OPINION)

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

SEAN C. GALLAGHER, P.J., CONCURRING IN JUDGMENT ONLY:

{¶ 51} Although I concur with the judgment reached by the majority, I am compelled to write separately to address a concern largely being overlooked in this case and to explain my differing rationale for affirming.

{¶ 52} The underlying dispute is between Assunta Rossi Personalty Revocable Living Trust and the defendants, who entered an agreement to build a condominium in Westlake, Ohio. *See* Amended Complaint Exhibit "A." Neither Rossi nor Traci was individually a party to the contract, and all of the warranty and fraud claims directly arose from the terms of that contract. Importantly, there are no allegations in the amended complaint that Traci and Rossi were intended

beneficiaries of the contract.[3] Instead, the amended complaint simply alleged that the agreement was individually entered by Rossi and Traci, despite the clear terms of the attached written agreement. *See id.* at ¶ 1. It was also alleged that title of the property was transferred to the trust after the structure was completed. *Id.*

{¶ 53} The majority's recognition of the parties' position — that "Traci represented Plaintiffs pro se at the trial court because his law license was inactive at the time the complaint was filed" — is an accurate representation of what occurred. From the beginning of this action, there was no pretense of his self-representation simply bleeding into joint issues. Traci believed himself to be representing Rossi as the trustee: when asked by the trial court who represented the Trust, Traci and Rossi both unequivocally responded, "both of us." Tr. 3:2-5. Traci then expressed his belief that by naming himself as a pro se party, he was able to represent the other plaintiffs in court despite his inactive licensure. Tr. 3:18-4:1.

{¶ 54} Under Gov.Bar R. VI(5)(B)(6), "an inactive attorney shall not '[p]ractice before any nonfederal court or agency in Ohio on behalf of any person except for the attorney's self.'" *Kromer v. Arthritis Found., Inc.*, 2025-Ohio-661, ¶ 38; *see also* Gov.Bar R. VII(31)(J)(1)(c)(ii) ("unauthorized practice of law"

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[3] The trial court partially denied the defendants' motion for summary judgment against Traci and Rossi individually, claiming that "they seem[ed] to argue that they qualify as such" despite the fact that the plaintiffs provided no analysis, discussion, or allegation of being third-party beneficiaries of the contract. The trial court then noted that the defendants did not present evidence to disprove the court's claim. That decision essentially moved the goal post on the defendants in violation of the party presentation principle. *Snyder v. Old World Classics, L.L.C.*, 2025-Ohio-1875, ¶ 4.

includes "rendering of legal services for another by any person" while "registered as an inactive attorney"). It is well settled that "[a] person who institutes legal proceedings and appears in court as a trustee for a trust is engaged in the practice of law on behalf of the trust." *Id.*, citing *Mahoning Cty. Bar Assn. v. Alexander*, 79 Ohio St.3d 1220, 1221 (1997). Thus, the only person authorized to represent the Trust in this case, the only party with claims according to the amended complaint, was Rossi as trustee. As the appellees concede, however, "she had little involvement in prosecuting the case" because "'Traci primarily acted on behalf of all Plaintiffs.'" Appellee's Brief, p. 13.

{¶ 55} It at least appears from how this matter proceeded that Traci included himself as a party to circumvent his credentialling issues. *See, e.g., Bank of New York v. Miller*, 2009-Ohio-6117, ¶ 17 (5th Dist.) (unlicensed individuals cannot act pro se on behalf of a trust); tr. 3:18-4:1. Nevertheless, that is a matter of ethical concern and neither party raised this as an issue for our review. It is merely noted only because this issue deserves more consideration should it again arise. In light of the arguments advanced by the parties, our continued silence on the matter could be misconstrued as acceptance of what potentially is a questionable practice.

{¶ 56} As to the merits of this appeal, I agree with the majority as to the standard of review. The standard for reviewing sanctions decisions is mixed — appellate courts defer to the factual determinations of the trial court while review of legal issues is de novo. *Thomas v. Murry*, 2021-Ohio-206, ¶ 39 (8th Dist.), citing *Res. For Healthy Living, Inc. v. Haslinger*, 2011-Ohio-1978, ¶ 26 (6th Dist.). In this

case, the trial court did not make any factual determinations. The court merely noted that it presided over the matter before denying the motion for sanctions:

> Further, the court has had extensive interactions with the parties in this matter and has sufficient knowledge of the circumstances that form the basis of defendant's request for relief that it is clear to the court that a hearing would be perfunctory, meaningless, and redundant. Based on the foregoing analysis, and taking into consideration the briefings and the court's knowledge of the circumstances that form the basis for relief, Defendant's motion for sanctions is denied.

Because the trial court rendered no factual conclusions, there is nothing to which this court can defer.

{¶ 57} Notwithstanding, the motion for sanctions is entirely based on Traci's alleged misconduct leading to the dispositive motions filed by both sides and the alleged frivolity of the claims advanced in the complaint. The appellants rightfully concede, however, that "the trial court failed to effectively curb Plaintiffs' conduct with its 'split the baby' approach where it consistently sought to make rulings that gave each party a partial favorable ruling." In other words, the alleged instances of overzealous conduct by the inactive attorney were essentially condoned by the trial court through its discovery rulings and the partial granting of the defendants' motion for summary judgment. The gist of the sanctions request hinges on the alleged frivolity of the claims. On that point, right or wrong, the trial court's decision finding reasonable grounds for the claims to proceed beyond summary judgment dispels any notion of frivolity.

{¶ 58} It cannot be concluded that denying the motion for sanctions constituted an abuse of discretion, and accordingly, I agree that we must affirm.