

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

MIKES HANDYMAN/HVAC SERVICE, LLC,	:	
Plaintiff-Appellant,	:	
v.	:	No. 116176
JEFFREY DIFIORE,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 8, 2026

Civil Appeal from the Lyndhurst Municipal Court
Case No. CVF 2302348

Appearances:

L. Bryan Carr, *for appellant.*

Kenneth D. Myers, *for appellee.*

EILEEN A. GALLAGHER, J.:

{¶ 1} Mikes Handyman/HVAC Service, LLC (“Mikes”) appeals the trial court’s denial of its motion for attorney fees and sanctions. For the reasons that follow, we reverse the decision of the lower court and remand the matter for a hearing on Mikes’ motion.

Facts and Procedural History

{¶ 2} This case concerns a breach of contract dispute between the parties for services provided by Mikes to Jeffrey DiFiore (“DiFiore”) which were not paid as agreed upon. The parties appealed to this court in *Mikes Handyman-HVAC Serv. LLC v. Difiore*, 2025-Ohio-5345 (8th Dist.), regarding the damages awarded to Mikes via summary judgment. A full recitation of the facts of the underlying contract dispute can be found there. *Id.* at ¶ 2-11.

{¶ 3} This appeal concerns the denial of Mikes’ motion for attorney fees and sanctions which was filed on February 26, 2025. The basis of Mikes’ motion is that the inordinate amount of filings and discovery requests filed by DiFiore, who represented himself pro se, were done frivolously, without good ground, for delay and to increase Mikes’ costs.

{¶ 4} This was not Mikes’ first motion for attorney fees in response to DiFiore’s filings. Mikes’ first request was made on March 13, 2024, in response to DiFiore’s “objection to personal jurisdiction.” There, the magistrate issued a journal entry, which the trial court adopted, holding the motion for attorney fees “in abeyance until such a hearing is held on the merits.” The court stated that “if the Plaintiff can provide evidence that Defendant’s Objections are frivolous and the Defendant knows or should have known jurisdiction is proper the Court shall consider an award of reasonable attorney fees after testimony has been provided.”

{¶ 5} That hearing was not had before Mikes filed another motion requesting attorney fees on June 25, 2024, with a motion for a protective order from

DiFiore's abusive discovery requests that contained 96 requests for admissions, 46 requests for production of documents with subsets and 15 interrogatories. The trial court granted the motion for protective order, in part, warning the defendant he "may not use Discovery to annoy or harass a litigant[.]" The court also held:

The Motions for Attorney Fees shall be held in abeyance until such time as the Court takes testimony as to the usual and customary time and hourly rate that were expended on the pleadings and/or motions second motion [sic] for attorney fees and sanctions.

This hearing on attorney fees was never held.

{¶ 6} On August 12, 2024, the trial court issued a journal entry where the court found that DiFiore had a "game plan" and his "intent was clear" that should Mikes file suit, DiFiore would make litigation as time-consuming and expensive as possible for Mikes. This strategy and threat were stated explicitly to Mikes in text messages from DiFiore, which the court quoted. The court found there was evidence that DiFiore acted on this threat since he had filed over ten pending motions or objections. The court found that "Defendant's pending motions are not supported by law and fact. The Court finds that these filings were not filed with 'good ground' to support them but rather 'for delay.'" The court then struck seven of DiFiore's filings "as sham and false" pursuant to Civ.R. 11.

{¶ 7} Mikes filed a third motion for attorney fees on August 16, 2024. Mikes included a fourth request for attorney fees in its motion for summary judgment filed on September 27, 2024. The court granted summary judgment without ruling on the request for attorney fees.

{¶ 8} On January 28, 2025, Mikes filed a notice of pending motions with the court. The trial court issued the following journal entry on February 12, 2025:

The Court is in receipt of Plaintiff's "Notice of Pending Motions," filed 01/28/2025. On 08/12/2024 the Court issued an order stating "Any hearing on Plaintiff's request for attorney's fees will be placed on the docket of [the judge]." The Court does not find a need for a hearing. Accordingly, Plaintiff's Motion for Attorney Fees filed 03/13/2024 and 06/25/2024 are DENIED.

Our review of the docket shows that no order, let alone this order, was issued on August 12, 2024. Furthermore, the court did not issue this order on another date. The court stated it did "not find a need for a hearing," despite the prior orders above stating a hearing would be held for the court to take testimony on the matter.

{¶ 9} On February 26, 2025, Mikes filed yet another motion for attorney fees and sanctions pursuant to Civ.R. 11 and R.C. 2323.51, which is the subject of this appeal. After almost a year passed, with no ruling on the motion, Mikes filed another notice of pending motion on February 3, 2026, which the court summarily denied the same day.

{¶ 10} Mikes now appeals raising the following sole assignment of error:

The trial court erred in denying the appellant's motion for attorney fees and sanctions pursuant to R.C. 2323.51 and Civil Rule 11.

Law and Analysis

{¶ 11} Mikes argues on appeal that DiFiore's filings were found by the trial court to be frivolous and without merit as defined by Civ.R. 11 and R.C. 2323.51, such that the trial court abused its discretion in denying its motion for attorney fees and sanctions.

{¶ 12} DiFiore argues that Mikes has waived this argument on appeal and res judicata applies to this issue because Mikes did not appeal the trial court’s denial of its earlier motions for attorney fees and sanctions. We find these issues of waiver and res judicata do not apply here as Mikes is not appealing the denial of its earlier motions and is instead appealing the denial of his February 26, 2025 motion which would have included additional attorney fees incurred since the denial of its earlier motions.

{¶ 13} Pursuant to R.C. 2323.51 litigants seeking sanctions against opponents for frivolous conduct are bound only by the following statutory deadline: “[A]t any time not more than thirty days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with the civil action or appeal.” R.C. 2323.51(B)(1). As such, Mikes was permitted to file his motion for attorney fees and sanctions after the final judgment in this case, i.e., within 30 days after the court issued the final order granting his summary judgment motion, which Mikes did.

{¶ 14} DiFiore cites no case law to support his argument that Mikes’ appeal of the trial court’s denial of its subsequent motion for attorney fees is barred by waiver or res judicata. As such, we find no merit to this argument.

{¶ 15} We now turn to Mikes’ assignment of error. Mikes’ motion for attorney fees and sanctions was brought pursuant to R.C. 2323.51 and Civ.R. 11. 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 and a reviewing court will not reverse a trial court's decision to grant or deny sanctions absent an abuse of discretion. *MRN Ltd. Partnership v. Gamage*, 2023-Ohio-4541, ¶ 20 (8th Dist.). As stated in *Shields v. McCloud*, 2026-Ohio-942, ¶ 13 (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*, 166 Ohio St. 3d 427, 2021-Ohio-3304, ¶ 35, 187 N.E.3d 463. The term abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 5 Ohio B. 481, 450 N.E.2d 1140 (1983).

{¶ 16} “Attorney fees are generally not recoverable unless recovery is authorized by statute or contract.” *Rojas v. Rucker*, 2025-Ohio-2777, ¶ 14 (8th Dist.). Both R.C. 2323.51 and Civ.R. 11 allow for the imposition of sanctions against a pro se litigant. *Bikkani v. Lee*, 2008-Ohio-3130, ¶ 29 (8th Dist.). Furthermore,

[u]nder Ohio law, pro se litigants are held to the same standard as all other litigants: they must comply with the rules of procedure and must accept the consequences of their own mistakes. *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363, 676 N.E.2d 171. The mere fact that a party is pro se does not shield the party from the imposition of sanctions when the party engages in frivolous conduct. *Burrell*, supra. 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 only defeat the purpose of R.C. 2323.51 and Civ.R. 11: to deter vexatious and harassing litigation.

Bikkani at ¶ 29.

{¶ 17} While Ohio law provides two separate mechanisms for an aggrieved party to recover attorney fees for frivolous conduct, they have separate standards of proof and differ in application. *Bikkani* at ¶ 18.

In determining whether a pro se party's conduct violates Civ.R. 11, the trial court should consider whether the party signing the document: (1) has read the document, (2) harbors good grounds to support the document to the best of the person's knowledge, information, and belief, and (3) did not file the document for purposes of delay. *Mitchell v. Western Reserve Area Agency on Aging*, 8th Dist. Nos. 83837 and 83877, 2004 Ohio 4353, P18.

If the pro se party fails to meet one of these requirements and the failure was willful, as opposed to merely negligent, the person may be subject to sanctions, including an award of reasonable attorney fees and expenses incurred by the opposing party bringing any motion under Civ.R. 11. *Id.* In deciding whether a violation was willful, the trial court must apply a subjective bad faith standard.

Bikkani at ¶ 21.

{¶ 18} Conversely, R.C. 2323.51 “applies an objective standard in determining frivolous conduct, as opposed to a subjective one” and the finding of frivolous conduct is determined without reference to what the individual knew or believed. *Bikkani* at ¶ 22. R.C. 2323.51(A)(2)(a) defines “frivolous conduct” as conduct that satisfies any of the following:

(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.

This statute was designed to chill egregious, overzealous, unjustifiable and frivolous action and serves to deter abuse of the judicial process by penalizing sanctionable conduct that occurs during litigation. *Musial Offices, Ltd. v. Cuyahoga Cty.*, 2021-Ohio-2325, ¶ 17 (8th Dist.). After a court finds frivolous conduct, the court must also determine whether the frivolous conduct adversely affected the party moving for attorney fees. *Bikkani* at ¶ 28.

{¶ 19} “[T]his court has found that a trial court abuses its discretion when it arbitrarily denies a motion for sanctions.” *Ditech Fin. L.L.C. v. Kudroff*, 2018-Ohio-4422, ¶ 10 (8th Dist.), citing *Bikkani*; *Lakeview Holding (OH), L.L.C. v. Haddad*, 2013-Ohio-1796 (8th Dist.); see also *Mitchell v. W. Res. Area Agency on Aging*, 2004-Ohio-4353, ¶ 27 (8th Dist.). In *Bikkani*, this court held that a trial court abuses its discretion by denying a motion for sanctions without a hearing if either the “record clearly evidences frivolous conduct” or “an arguable basis exists for an award of sanctions[.]” pursuant to Civ.R. 11. *Id.* at ¶ 31. “[I]f an arguable basis exists for an award of sanctions under Civ.R. 11, a trial court must hold a hearing on the motion.” *Bikkani* at ¶ 31; *Ditech* at ¶ 14 (finding that the trial court erred by denying the motion for sanctions without a hearing when the movant established an arguable basis for awarding sanctions).

{¶ 20} DiFiore argues the trial court did not abuse its discretion since the imposition of sanctions and attorney fees was discretionary and is not mandated

merely because frivolous conduct is found. DiFiore also argues the trial court was not required to hold a hearing on the motion. We find these arguments to be without merit.

{¶ 21} Here, the trial court very clearly determined that DiFiore’s conduct violated Civ.R. 11 in its journal entry, that his motions were “not supported by law and fact,” were not filed with “‘good ground’ to support them” and were filed “for delay.” The court struck the filings pursuant to Civ.R. 11 “as sham and false[.]” Even DiFiore admits the trial court found a number of his filings to be frivolous. The trial court also found DiFiore’s behavior was done purposefully and with intent to punish Mikes for filing the lawsuit to make “litigation as time-consuming and expensive as possible for [Mikes].” DiFiore’s subjective intent to file documents for the purpose of delay was made clear in the text messages the court cited.

{¶ 22} Furthermore, DiFiore’s conduct objectively qualifies as frivolous under R.C. 2323.51(A)(2)(a)(i) and (ii) because it was obviously done merely and explicitly to harass Mikes and cause unnecessary delay and to needlessly increase the cost of litigation. Similarly, these motions were obviously not warranted under existing law because they were stricken as false and sham.

{¶ 23} Just as in *Bikkani*, the trial court here never held a hearing on Mikes’ request for attorney fees and costs “under R.C. 2323.51 and Civ.R. 11, despite the overwhelming evidence of egregious conduct throughout the litigation. The record clearly evidences frivolous conduct as well as an arguable basis to impose sanctions under Civ.R. 11.” *Bikkani* at ¶ 32. Because the record clearly evidences frivolous

conduct and an arguable basis exists for an award of sanctions and attorney fees, we find the trial court abused its discretion when it arbitrarily denied Mikes' motion for attorney fees and sanctions without a hearing. *Id.* at ¶ 31. The trial court even stated several times it was going to hold a hearing for the motion on attorney fees and then never did.

{¶ 24} Accordingly, Mikes' sole assignment of error is sustained.

{¶ 25} Judgment is reversed and the matter is remanded for a hearing on Mikes' motion for attorney fees and sanctions.

It is ordered that appellant recover from appellee 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 Lyndhurst Municipal 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.

EILEEN A. GALLAGHER, JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR

