

Wolff v. Sugiyama, 5 ROP Intrm. 207 (1996)

MARTIN WOLFF,
Appellant,

v.

PETER L. SUGIYAMA,
Appellee.

CIVIL APPEAL NO. 27-95
Civil Action No. 109-94

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: April 22, 1996

Martin Wolff appearing *pro se*

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: JEFFREY L. BEATTIE, Justice; LARRY W. MILLER, Justice; and PETER T. HOFFMAN, Justice.

BEATTIE, Justice:

Martin Wolff ("Wolff") appeals from a trial court order imposing sanctions on him for filing a frivolous third-party claim against appellee Peter Sugiyama ("Sugiyama"). We affirm.

I. Case History

This action was commenced by Jane Arugay ("Arugay") and Flordeliza Garduque, who are former domestic employees of Wolff, in order to recover damages for alleged tortious conduct of Wolff toward them occurring during the period of their employment with Wolff. Their claims have not yet been decided by the trial court and are not the subject of this appeal.

In response to their suit, Wolff filed a counterclaim against them alleging that they breached their employment contract. He **¶208** also filed a third-party complaint against Sugiyama in which he claimed that Sugiyama intentionally induced Arugay to breach her employment contract with Wolff. The trial court entered summary judgment against Wolff on his claim against Sugiyama and ordered Wolff to pay Sugiyama's attorney fees in the amount of \$969.00 as a sanction for filing a frivolous third-party claim. On appeal, we upheld the summary judgment but reversed the imposition of sanctions on procedural grounds and remanded for further proceedings on the matter of sanctions. *See Wolff v. Sugiyama*, 5 ROP Intrm. 105 (1995).

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After further proceedings in the trial court, the court again found the third-party complaint to be frivolous and ordered Wolff to pay the attorney fees of Sugiyama. Wolff has now appealed that order.

II. Discussion

Wolff devotes a mere nine sentences to the legal argument section of his appellate brief. Such as it is, the brief asserts that the trial court erred by (1) failing to comply with the mandate of *Wolff v. Sugiyama* by not giving him proper notice that the court was considering imposing sanctions and by not making proper findings; (2) ordering that Wolff pay Sugiyama's attorney fees without specifying an amount; and (3) attempting to "re-write the legal history of this case."

A. Notice

In *Wolff v. Sugiyama* we held that before imposing sanctions *sua sponte*, a trial court must provide the person facing sanctions with notice which informs the person of the fact that the court is considering the imposition of sanctions, the basic reason why the court is considering the imposition of sanctions, and the form of sanctions it is considering. *Id.* at 115. Here, the trial court issued a notice that said on a specified date a hearing would be held at which Wolff was to show cause why attorney fees and costs should not be awarded to Sugiyama pursuant to 14 PNC § 702 for the filing of a frivolous third party complaint against Sugiyama. That notice was sufficient under the *Wolff v. Sugiyama* standards.

B. Findings

In *Wolff v. Sugiyama* we observed that, although a trial court need not make findings of fact in all cases when imposing sanctions, the court must "ensure that the record is sufficient to allow for meaningful review of the sanction". *Id.* at 114. There, we noted that the order which imposed sanctions did not identify **1209** the legal authority relied upon for the imposition of sanctions, which deprived us of the ability to conduct a meaningful review of the order. In the instant case, the trial court specified 14 PNC § 702 as the source of the authority it relied upon to impose sanctions¹.

The trial court entered summary judgment against Wolff, which we affirmed, because the undisputed facts showed that Sugiyama did nothing to induce Arugay to leave Wolff's employ. *Id.* at 112. It is clear from the record that the reason the trial court found the filing of the third-party complaint to be frivolous was that there was no factual basis for claiming that Sugiyama engaged in any conduct which induced Arugay to breach her contract with Wolff and that Wolff made the allegation without first performing any reasonable investigation. The trial court noted that there was no genuine issue of fact on the issue of inducement because Arugay had already stopped working for Wolff at the time of her first contact with anyone from the Sugiyama household. The court further noted that, at the hearing on sanctions, Wolff offered no

¹ The statute provides in pertinent part that "When, in its discretion, the court finds that a complaint in a civil case is . . . frivolous . . . it shall award reasonable attorney's fees in favor of the prevailing defendant". 14 PNC § 702.

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explanation of his basis for filing the third-party complaint, but only submitted an affidavit.

The affidavit recited two factors to justify the filing of the third-party complaint. First, it stated that a prior affidavit, which indicated that Sugiyama had told Wolff that Arugay worked for him, "stated factual probable cause to file the [third-party] complaint". Second, it stated that Wolff had, on an unspecified date, asked the Department of Labor for unspecified information but that he was "stonewalled." The trial court noted that this was "the sum total of Wolff's efforts at [the] hearing and he had nothing else to say". Trial Court Decision and Order of August 7, 1995.

Wolff's continued reliance on his prior affidavit and the encounter with Sugiyama at the Bank of Guam, where Sugiyama told him that Arugay was working for him, is mystifying in light of our previous opinion in this matter. There, we explained that even if Wolff reasonably believed that Arugay was working for Sugiyama, that fact did not suffice to establish that Sugiyama was the proximate cause of Arugay's leaving Wolff's employ, an essential element of the tort of intentional interference with contract. *See id.* at 112. At least under the circumstances of this case as **¶210** discussed below, Wolff's conversation with Sugiyama did not provide Wolff with a reasonable factual basis for filing the intentional interference with contract claim against Sugiyama and did not satisfy Wolff's duty to conduct a reasonable investigation before filing his claim.

The same can be said of the asserted "stonewalling" by the Department of Labor. Even assuming that Wolff's inquiry to the Department of Labor occurred before he filed the third-party complaint, it fell far short of being a reasonable factual investigation in the circumstances of this case. Although Arugay was working in the Sugiyama household not too long after she stopped working for Wolff, Wolff had knowledge of a number of facts which would give a reasonable attorney pause before assuming that it was because of some conduct of Sugiyama that Arugay had stopped working for Wolff.

First, Wolff knew that on October 17, 1993, just a few days before Arugay stopped working for him, she had been a target of a knife attack by Lordesta Eldebechel, a member of Wolff's household and a defendant in this case. The attack failed when Eldebechel was restrained by Wolff.

Second, shortly after the knife attack and on the same day, Wolff and Eldebechel had a "meeting" with Arugay in the couple's (Wolff and Eldebechel) master bedroom in which Eldebechel told her to take off her clothes because all the boys at Kless were going to have sex with her. Once again, Wolff intervened.

Third, about an hour after the master bedroom incident, Wolff put Arugay in his truck and took her to Ngchesar Village. Once they arrived at the village, he told her she must take off her clothes and display herself naked in the village or else she had to go back to Kless and "face the knife". She took off her clothes and displayed herself.

Fourth, on that same day, Wolff told Arugay that she was terminated and that she would

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be returned to the Philippines on the first flight after he returned from a planned four day trip to Saipan².

¶211 Before filing any claims against a party, an attorney has a duty to conduct a reasonable inquiry into the underlying facts and law on which the claims are predicated. The standard is reasonableness under the circumstances. *Business Guides v. Chromatic Communications*, 111 S.Ct. 922, 933 (1991). With respect to the facts, the inquiry "at the very least requires some kind of investigation, some affirmative conduct on the part of the attorney". *Mohammed v. Union Carbide Corp.*, 606 F. Supp. 252, 261 (E.D. Mich. 1985).

Wolff's affidavit reveals that he conducted virtually no investigation of the facts on which his claim against Sugiyama was predicated. He made no inquiries of Sugiyama, Mrs. Sugiyama, Arugay³ or any other person to ascertain how Arugay came to be employed in the Sugiyama household. He also failed to conduct any discovery in connection with his counterclaim against Arugay for breach of contract to ascertain the circumstances surrounding her employment in the Sugiyama household.⁴ The record shows that, under the circumstances of this case, he fell far short of his duty to investigate. It is apparent from the trial court's order that it found the third-party complaint to be frivolous because of the lack of any factual basis and the lack of sufficient factual investigation. Moreover, the trial court specified 14 PNC § 702 as its source of authority. The record is therefore sufficient to provide for meaningful review of the sanctions imposed and we find no error.

C. Failure to Specify Amount of Fees

Wolff cites no authority in support of his argument that the trial court improperly delegated judicial power to Sugiyama by awarding attorney fees and not specifying the amount of fees **¶212** awarded. We need not address the argument, however, except to note that in the trial court's earlier order it specified that the fees were \$969, so Wolff's argument is wholly without merit.

D. Trial Court's Alleged Attempt to Rewrite History

Wolff contends that the trial court attempted to rewrite history in its order imposing

² Each of these four incidents is taken from Wolff's own testimony in Criminal Case 320-93, in which Wolff was found not guilty of possession of firearms and in which Arugay testified for the prosecution. A partial transcript of Wolff's testimony in that trial was submitted by Sugiyama in support of his motion for summary judgment.

³ Wolff claims that he was under a court order to avoid contact with Arugay, who was a witness for the prosecution in a criminal case against Wolff. *See n. 2, supra*. The record shows, however, that the criminal case, and therefore the "stay away" order, terminated several weeks before Wolff filed his third-party complaint.

⁴ There is no apparent reason why Wolff had to assert his claim against Sugiyama without investigating the facts. Even if his independent efforts, had they been made, were "stonewalled", he could have conducted discovery in connection with his breach of contract claim against Arugay. If the information obtained during discovery had shown a factual basis for a claim against Sugiyama, the claim then properly could have been asserted.

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sanctions, but he doesn't specify the manner in which the attempted rewrite occurred, the true "historical facts", nor how the alleged rewrite is at all relevant to the issue on appeal. We therefore need not address this contention.

III. Sanctions on Appeal

A. *Misrepresentation to the Court*

During the course of appellate argument, attorneys are often asked questions by members of the appellate panel of justices. We recognize that there is often no time for research of the record or for reflection before responding. In most cases, counsel must rely on recollection assisted by thorough preparation for oral argument. For that reason, we expect that, on occasion, we will receive inaccurate information from counsel responding in good faith to a query from the Court at oral argument. Where, however, it appears that counsel has supplied inaccurate information in an attempt to mislead or otherwise has not responded in good faith, sanctions are appropriate.

During the argument of this appeal, one of the justices asked Wolff whether it was true, as stated in appellee's brief, that it was undisputed that Wolff had sought to terminate Arugay and send her back to the Philippines prior to the time she became employed in the Sugiyama household. Wolff denied that he had decided to send Arugay back and said he never had any intention of repatriating her.

As noted above, however, the partial transcript of Wolff's own testimony in Criminal Case 320-93 shows that, while under oath, Wolff testified that he had planned to terminate Arugay and repatriate her and that, on the day of the knife attack incident, he told her that he was leaving for Saipan the next morning and that she would be sent back to the Philippines upon his return. In view of Wolff's testimony, it appears to us that his statement at oral argument was not only false and misleading, but lacking in good faith as well.

1213 Courts rely on representations of counsel, who are officers of the Court. When the representations prove to be false and made without a good faith basis, counsel will be held accountable. Although here Wolff is a party appearing *pro se*, he is still an attorney subject to the standards of attorney conduct. Accordingly, Wolff is sanctioned in the amount of \$400, to be paid to the Clerk of Courts within ten days.

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B. *Appellee's Request for Additional Fees*

Appellee has requested that we award him the attorney fees he incurred in connection with this appeal. He does not allege that the appeal itself is frivolous, but rather contends that where, as here, a party is awarded fees in the trial court, he should get fees "for defending his victory in the court of appeals", citing *Muscare v. Quinn*, 680 F.2d 42 (7th Cir. 1982). *Muscare* was a civil rights suit in which, by statute, the prevailing party can be awarded his fees, without regard to the frivolity of his opponent's position in the case. In this case, we have no such statute and any award of fees must be based upon a finding that this appeal is itself frivolous. In view of the lack of cases defining the procedural boundaries and guidelines for the imposition of sanctions prior to *Wolff v. Sugiyama*, we cannot say that this appeal is frivolous. Therefore, the request for additional fees is denied.

III. Conclusion

The trial court's order imposing sanctions in the amount of Sugiyama's attorney fees, \$969.00, is AFFIRMED. Wolff is sanctioned on appeal an additional sum of \$400, payable to the Clerk of Courts.