IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

October 29, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

KYLE A. JUSTICE, Plaintiff-Appellant, v. JOSEPH G. COKER, Defendant-Appellee.	) C/A NO. 03A01-9606-CV-00191)) ANDERSON LAW)) HON. WILLIAM E. LANTRIP,) JUDGE)) AFFIRMED AND) REMANDED
KYLE A. JUSTICE, Plaintiff-Appellant, v. BENNY GREEN, KENNETH JAROCKI, and KELLY JAROCKI, Owners of K.B. STAVES, Defendants-Appellees.	) C/A NO. 03A01-9606-CV-00192)) ANDERSON LAW)) HON. WILLIAM E. LANTRIP,) JUDGE)))) AFFIRMED AND) REMANDED

VIC PRYOR, BASISTA, PRYOR & BALLOFF, Jacksboro, for Plaintiff-Appellant.

JOSEPH G. COKER, Jacksboro, for Defendants-Appellees.

OPINION

Franks. J.

These cases are combined on appeal because of the relationship of the parties, and the issues presented.

Appellant Justice was the Plaintiff in a contract dispute between him and the owners of K.B. Staves (Appellees Benny Green, Kenneth Jarocki, and Kelly Jarocki). Appellee Joseph Coker represented the owners of K.B. Staves in that litigation.

Appellant sued the owners on a contract theory and sued Coker alleging that he had attempted to deny Justice due process, acted with conduct unbecoming an officer of the Court, and attempted judicial blackmail to prevent appellant from pursuing a legal right.

The Trial Judge determined the claims were made for improper purposes, were not warranted by law, were frivolous and without merit. He awarded monetary sanctions, based largely on appellant's own statements[1].

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[1] These statements, included in the Court's orders [*Green*, T.R. 184-193; *Coker* T.R. 135-243], included the following:

?I am filing a lawsuit today against your attorney. Now he will begin to pay for his mistakes rather than benefit from them?.

?If I [drop dead], I've instructed my wife to do one thing: to take the insurance money and go out and hire as many attorneys as it takes to make sure that Mr. Coker pays the price for what he has done to me.?

?I am not going to go out and hire high-priced attorneys to fight a case which I know I have a chance of losing.?

?I have another legitimate lawsuit that I'm in. I don't need this kind of aggravation, but I will not make it go away.?

?Whether I win or lose . . . it's going to cost you money, not just Benny Green, that's the reason I'm doing it.?

?No matter what happens, what Mr. Green comes back with, no matter if this case gets dismissed or not, I'll come back with another one. I'll

First, appellant argues that he should not have to pay sanctions, because he was ?following the advice? of the General Sessions Court. He notes that when the General Sessions Referee was dismissing his claims, the Referee stated ?I'm going to recommend to you is, you can now immediately appeal this up to Circuit Court and have it joined with this docket number.? Appellant argues that he should not be penalized for following the advice of the court and pursuing this suit.

A Referee's attempts to assist a *pro se* litigant with procedure do not prevent other courts from awarding sanctions. *See generally Bledsoe County v. McReynolds*, 703 S.W.2d 123 (Tenn. 1985); *also see Elizabethon Housing and Development Agency, Inc. V. Price*, 844 S.W.2d 614 (Tenn. App. 1992). Appellant's positive interpretation of the Referee's dismissal of his case was at his own peril.

As to the Green case, appellant argues that no sanctions should have been assessed against him because his suit claimed breach of oral contract, a ?valid, recognized legal theory.? However, the role of Rule 11 is not to determine whether a particular valid legal theory is advanced, but is rather to discourage the filing of suits for ?any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation . . . .? Tennessee Rules of Civil Procedure, 11.02(1).

We review the assessment of sanctions by examining whether the Trial Court abused his discretion. *Krug v. Krug*,

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come back with another one. I will keep Mr. Green and Mr. Coker in court for the rest of my natural life.?

838 S.W.2d 197 (Tenn.App. 1992). A review of the record shows that this suit was the third in a series of suits, and was, by Appellant's own repeated admissions, directed at harassing Appellees. The Trial Court did not abuse his discretion in awarding sanctions.

As to Coker, appellant argues that federal criteria, promulgated by courts interpreting Federal Rules of Civil Procedure, 11, should govern the assessment of sanctions in Tennessee. He cites particularly a Fifth Circuit case holding that factors to be considered include: what conduct is being punished or is sought to be deterred, what expenses or costs were caused by the violation of the rule, were the costs reasonable and mitigated, was the sanction the least severe sanction adequate or was it overly harsh? *Topalian v. Ehrman*, 3 F.3d 931, 937 (5th Cir., 1993).

The language used in the federal and state versions of Rule 11 is identical and Tennessee courts have looked to the federal courts' interpretations for guidance. *Andrews v. Bible*, 812 S.W.2d 284 (Tenn. 1991); *but see Con-Tech, Inc. v. Sparks*, 798 S.W.2d 250 (Tenn.App. 1990). However, it is not necessary that we formally adopt the factors or criteria cited by Appellant. The factors mentioned in *Topalian* come within the language of the rule itself.[2]

A review of this record shows that appellant filed a non-meritorious suit so that Coker would ?begin to pay? and that he intended to keep Coker in court ?for the rest of my

[2] Naming the conduct that is the basis of the sanctions is required by 11.03(3). Making the determination of expenses caused by the violation of the rule and assuring that the costs be reasonable and appropriate is required by 11.03(2).

natural life.? The Trial Court did not abuse his discretion in assessing sanctions against appellant.

Appellees seek an award for costs and attorney's fees on the basis that the appeal is frivolous. A frivolous appeal is one devoid of merit, or one where there is little prospect that an appeal can ever succeed. *Industrial Development Board of City of Tullahoma v. Hancock*, 901 S.W.2d 382 (Tenn. 1995). A factual or legal dispute will preclude an award of damages for a frivolous appeal. *Anderson v. Dean Truck Line, Inc.*, 682 S.W.2d 900, 902 (Tenn. 1984). Appellant's argument against Green and others, that he could not be sued for alleging a recognized cause of action, had no basis in law and we conclude the appeal to be frivolous, pursuant to T.C.A. § 27-1-122. Appellant's appeal as to Coker, that more stringent federal standards might apply to Rule 11, had some support for its reasoning and this appeal is found not to be frivolous.

The judgments of the Trial Court are affirmed, and the causes remanded with costs of the appeal assessed to appellant, and the Trial Court is directed to assess damages in accordance with T.C.A. § 27-1-122 in the Green, et al., case.

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Herschel P. Franks, J.

CONCUR:

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Don T. McMurray, J.

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Charles D. Susano, Jr., J.