

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

John E. Harbin,)
)
Plaintiff,)

Civil Action No. 2017-CP-04-02099

vs.)

ORDER

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MAR 06 2020

SC Court of Appeals

April Blair, Tracy Dunn, HUB)
Enterprises, Inc., Shawn Conway,)
Gallivan White & Boyd, Sam)
Nikopoulos and John Doe,)
)
Defendants.)

Gallivan White & Boyd’s and Sam Nikopoulos’ (collectively “GWB”) Motion for Sanctions came before the Court for hearing on July 11, 2019. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of GWB. Having heard the arguments and reviewed the submissions of the parties, GWB’s Motion for Sanctions is hereby granted for the reasons stated below.

BACKGROUND

I. The Prior Lawsuit

John E. Harbin (“Harbin” or “Plaintiff”) had a dispute with April Blair and Tracy Dunn, resulting in Harbin being shot by Dunn in the leg while he was at Blair’s house. Harbin sued Blair and Dunn for negligence, assault and battery, defamation, slander, and premises liability. *See John E. Harbin v. April Black and Tracy Dunn*, C.A. No. 2014-CP-04-02908 (the “Prior Lawsuit”). GWB represented Blair, who had homeowners coverage through State Farm Insurance Company. The case went to trial, and the jury returned a verdict for Blair. Harbin appealed the jury verdict and made various post-trial motions, all of which were denied.

II. The Current Lawsuit

Plaintiff filed this lawsuit on October 9, 2017 (the "Current Lawsuit"). The allegations of the Complaint were nearly identical to those in the Prior Lawsuit. Plaintiff's Amended Complaint stated only one cause of action against GWB for tortious interference with contract, alleging that GWB interfered with the attorney-client contract between Plaintiff and his attorney, Donald L. Smith ("Smith"). GWB made a Motion to Dismiss the Amended Complaint on November 22, 2017. This Motion, as well as similar motions filed by the other Defendants, was granted by this Court. This Court held that a lawyer cannot be liable to non-client third parties for actions taken in the representation of a client. Furthermore, this Court found that a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. Following the Court's Order, Plaintiff filed a Motion to Reconsider on February 15, 2019. This Motion was denied by the Court.

RULING

Pursuant to the Frivolous Civil Proceedings Sanctions Act ("FCPSA"), an attorney may be sanctioned for filing a frivolous pleading, motion or document, or making frivolous arguments that are not reasonably supported by the facts or existing law. S.C. CODE ANN. § 15-36-10(A)(4)(a)-(c). Sanctions may include an order that the party pay the reasonable costs and attorneys' fees of the prevailing party resulting from the frivolous proceeding. *Id.* at § 15-36-10(G)(1).

The initiation of this Current Lawsuit was an improper attempt to relitigate the Prior Lawsuit. The Current Lawsuit is based upon the same facts that were raised in the prior lawsuit. After reviewing post-trial motions for a new trial, the trial judge found no reason to disturb the jury's verdict. A party's dissatisfaction with the outcome of a trial cannot be the basis for a retrial of those issues.

The Court finds that any reasonable attorney would believe that the filing of the Current Lawsuit was frivolous. When Plaintiff's efforts to overturn the jury verdict failed, Plaintiff and Smith decided to bring this action to relitigate these issues. Thus, Smith's filing of the Complaint constitutes a sanctionable action under the FCPSA.

Furthermore, as this Court previously held in its Order granting GWB's Motion to Dismiss, case law from the South Carolina Court of Appeals and Supreme Court squarely addresses the question of whether a lawyer can be held liable to a non-client third party for actions taken in the representation of a client. Based upon the legal principle announced in *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986), and then affirmed in the cases of *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) and *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), a lawyer has no liability to a non-client third party for actions taken in the representation of a client. A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit. Through the exercise of minimal diligence, Smith could have located these cases. Instead, it is apparent that Smith failed to assess whether case law supported his theories of liability against GWB.

The Court is particularly concerned with the filing of this action given that Smith was previously sanctioned by this Court in 2016 for similar conduct. See Feb. 6, 2016 Order, *Gregg Battersby v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company*, C.A. No. 2015-CP-04-00667. In that case, Smith brought a complaint alleging that attorneys were liable to the plaintiff for damages arising out of the attorneys' representation of their client. The Honorable R. Lawton McIntosh found that no reasonable attorney would have brought the plaintiff's claims against the attorneys



Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al
Case Number: 2017CP0402099
Type: Order/Sanctions

So Ordered

s/ J. Cordell Maddox Jr.

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given the well-established case law on attorney immunity, and awarded attorneys' fees and costs for defending the lawsuit and bringing the motion for sanctions.

In light of the fact that Smith was previously sanctioned for this same conduct, and the clear rulings from our state's appellate courts, a reasonable attorney would not have filed and pursued this action against GWB because it was clearly not warranted under existing law. Thus, Smith violated the limitations established by the FCPSA, and this Court finds that he should be required to reimburse GWB for the attorneys' fees and costs incurred in bringing this Motion for Sanctions.

Therefore, GWB's Motion for Sanctions is hereby granted, and Plaintiff's attorney, Donald L. Smith, is ordered to pay GWB \$13,081.74 as reimbursement for the attorneys' fees and costs incurred in bringing this Motion for Sanctions.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019