

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1569

JANICE M. HORNOT

VERSUS

LEONARD CARDENAS, III

Judgment Rendered: March 25, 2011

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 534,772

Honorable William A. Morvant, Presiding

* * * * *

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* * * * *

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

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GUIDRY, J.

Janice Hornot appeals from a judgment of the trial court ordering her to pay \$15,000.00 in sanctions, plus all courts costs and judicial interest from July 1, 2009, to her former attorney, Leonard Cardenas, III. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Janice Hornot, an attorney, was injured in an automobile accident in March 1996. In approximately October 2001, Ms. Hornot contacted Mr. Cardenas and asked him to represent her in connection with that accident. Despite acknowledging many obstacles in her case, Mr. Cardenas agreed to represent Ms. Hornot, and the parties subsequently agreed to a contingency fee of 17.5%. Thereafter, Ms. Hornot reluctantly agreed to mediation of her claim, whereupon a settlement of \$95,000.00 was reached. However, after the mediation, Ms. Hornot refused to execute the receipt and release for settlement, and the settlement funds remained in Mr. Cardenas' client trust account.

On July 25, 2005, Ms. Hornot filed a claim against Mr. Cardenas in the Nineteenth Judicial District Court for alleged actions and/or omissions designed to cause her emotional and mental distress and anguish, for fraudulent acts, and for return of documents, pleadings, papers, deposition transcripts, and funds in his possession relating in any manner to the case in which Mr. Cardenas had represented Ms. Hornot. Mr. Cardenas filed a reconventional demand, alleging that he was entitled to attorney's fees and out-of-pocket expenses in connection with his representation of Ms. Hornot in the underlying personal injury action, and that he was entitled to general and special damages for Ms. Hornot's intentional infliction of emotional distress and defamation of him.

Following a trial, the court rendered judgment in favor of Mr. Cardenas and against Ms. Hornot, finding that Ms. Hornot did not come remotely close to

carrying her burden of proof as to any one of the allegations contained in her petition. Additionally, the trial court held that Mr. Cardenas proved his claim for defamation against Ms. Hornot, and awarded him \$20,000.00. The trial court also imposed La. C.C.P. art. 863 sanctions against Ms. Hornot in the amount of \$10,000.00, finding the mere signing and filing of the pleading in this matter constituted a blatant violation of the provisions of that article. Ms. Hornot appealed the trial court's judgment, and in Hornot v. Cardenas, 07-1489 (La. App. 1st Cir. 6/20/08) (unpublished opinion), 986 So. 2d 258 (table), writ denied, 08-2131 (La. 9/26/08), 992 So. 2d 996, cert. denied, ___ U.S. ___, 129 S. Ct. 1584, 173 L. Ed. 2d 676 (2009), this court affirmed the portion of the trial court's judgment awarding Mr. Cardenas damages for defamation. However, after finding that Ms. Hornot was not afforded a hearing before sanctions were imposed, as required by Article 863(E), this court vacated the award of Article 863 sanctions and remanded the matter to the trial court for a full evidentiary hearing on that sole issue.

Following a hearing on remand, the trial court found that Ms. Hornot's filing of the suit against Mr. Cardenas was a "pure and blatant" Article 863 violation. In a judgment signed on March 5, 2010, the trial court ordered Ms. Hornot to pay \$15,000.00 in sanctions to Mr. Cardenas, plus all court costs and judicial interest on the sanctions award from date of judicial demand, July 1, 2009, until said judgment is paid. Ms. Hornot now appeals this judgment.

DISCUSSION

To impose sanctions, a trial court must find that one of the affirmative duties imposed by La. C.C.P. art. 863 has been violated. Stroscher v. Stroscher, 01-2769, p. 8 (La. App. 1st Cir. 2/14/03), 845 So. 2d 518, 526. At all pertinent times,

Louisiana Code of Civil Procedure article 863 provided, in pertinent part:

B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

* * *

D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

Article 863 imposes an obligation on litigants and their attorneys to make an objectively reasonable inquiry into the facts and law; subjective good faith will not satisfy this duty of reasonable inquiry. The article does not empower a trial court to impose sanctions simply because a particular argument or ground for relief is subsequently found to be unjustified; failure to prevail does not trigger an award of sanctions. Article 863 is intended to be used only in exceptional circumstances; where there is even the slightest justification for the assertion of a legal right, sanctions are not warranted. A trial court's determination regarding the imposition of sanctions is subject to the manifest error or clearly wrong standard of review. Stroscher, 01-2769 at p. 8, 845 So. 2d at 526.

In its oral reasons for finding that Article 863 was violated, the trial court found that Ms. Hornot, both at the original trial and at the sanctions hearing, acknowledged true facts contrary to the allegations made in her petition. Particularly, it found that Ms. Hornot conceded that Mr. Cardenas, himself, never accused her of committing insurance fraud; that she admitted at trial that Mr. Cardenas did not commit fraud; that Ms. Hornot knew about the "insurance fraud"

allegation prior to the mediation, but participated in the mediation and agreed to settle her action; that she refused to accept the settlement funds despite Mr. Cardenas' repeated requests that she collect her funds; and that she admitted Mr. Cardenas returned her case file to her. Further, though Ms. Hornot attempted to argue for the first time at the sanctions hearing that Mr. Cardenas had fabricated the insurance fraud allegation at the mediation to coerce her to settle her personal injury action, the trial court found that such allegation was clearly contrary to Ms. Hornot's prior trial testimony, the testimony presented at the sanction hearing, and the documentary evidence contained in the record.

Accordingly, after reviewing the testimony and documentary evidence presented both at the original trial and at the sanctions hearing, and after reviewing the Fourth Circuit's opinion in Hornot v. Cardenas, 06-1341 (La. App. 4th Cir. 10/3/07), 968 So. 2d 789, the trial court found:

There is absolutely nothing in this record, either at the trial or at the hearing today, to show that Ms. Hornot made any, not even a vague attempt to comply with the provisions of [Article] 863 before filing suit. ... And the fact that she filed a similar suit [in Orleans Parish] which was dismissed and scathing comments by the Fourth Circuit two years prior to filing this one to me only adds and compounds the problem, that this was a pure and blatant [Article] 863 violation. This is the precise type of conduct that [A]rticle 863 seeks to avoid.

From our review of the record in its entirety, we find that the record clearly supports the finding that the allegations made by Ms. Hornot in her petition were not well grounded in fact. Ms. Hornot admitted facts directly in conflict with those asserted in her petition, and to the extent that she asserted Mr. Cardenas coerced her to settle her personal injury claim with threats of criminal and disciplinary consequences related to the alleged insurance fraud issue, her testimony was contradicted by Mr. Cardenas' testimony. The trial court had the opportunity to assess the credibility of the witnesses, and its findings regarding their credibility demands great deference. See Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989).

Accordingly, we find no error in the trial court's determination that Ms. Hornot violated Article 863 by filing the action against Mr. Cardenas in the Nineteenth Judicial District Court.

Once the trial court finds a violation of Article 863 and imposes sanctions, the determination of the type and/or the amount of the sanction is reviewed on appeal utilizing the abuse of discretion standard. Stroscher, 01-2769 at p. 8, 845 So. 2d at 526.

In the instant case, the trial court awarded \$15,000.00 in sanctions to Mr. Cardenas. Ms. Hornot asserts that the trial court abused its discretion in awarding *any* sanctions to Mr. Cardenas, because he was represented by a member of his own law firm, and therefore, is precluded from recovering attorney's fees, citing Ables v. Ungarino & Eckert LLC, 06-0366 (La. App. 1st Cir. 12/28/06), 951 So. 2d 318, writ denied, 07-0192 (La. 3/23/07), 951 So. 2d 1106, and Lamz v. Wells, 05-1497 (La. App. 1st Cir. 6/9/06), 938 So. 2d 792.¹

Louisiana Code of Civil Procedure article 863 provides that once the court determines that the provisions of the article have been violated, it shall impose "an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee." Four factors that must be considered in setting an amount of sanctions are: 1) the conduct being punished or sought to be deterred by the sanction; 2) the expenses or costs caused by the violation of the rule; 3) whether the costs or expenses were reasonable as opposed to self-imposed, mitigatable, or the result of delay in seeking court intervention; and 4) whether the sanction is the least severe sanction adequate to achieve the purpose of the rule under which it was imposed. Dubois v. Brown, 01-0816, p. 4

¹ We note that the cases cited by Ms. Hornot involve an attorney seeking attorney's fees for self-representation, not representation by the attorney's firm as in this case.

(La. App. 1st Cir. 5/10/02), 818 So. 2d 864, 867, writ denied, 02-1654 (La. 10/14/02), 827 So. 2d 421.

At the sanctions hearing, Mr. Cardenas testified that members of his firm spent one hundred plus hours defending the suit brought by Ms. Hornot, which went to trial, was appealed to the First Circuit, had writs filed in the Louisiana Supreme Court and United States Supreme Court, and was remanded to the trial court for a hearing on the sanctions. Counsel for Ms. Hornot objected to the testimony, and in overruling the objection, the trial court noted that it had previously awarded attorney's fees to Mr. Cardenas in the judgment on the merits of the defamation claim, and that it was not using attorney's fees incurred as the basis for a sanction award. The trial court subsequently awarded \$15,000.00 in sanctions, representing the one hundred plus hours in time spent by Mr. Cardenas' law firm defending her suit, time that presumably could have been spent generating fees for the firm.

Sanctions under La. C.C.P. art. 863 serve to prevent abuse of the judicial process. See Rochon v. Roemer, 93-2444 (La. 1/7/94), 630 So. 2d 247, 248, cert. denied, 512 U.S. 1224, 114 S. Ct. 2716, 129 L. Ed. 2d 841 (1994). The trial court agreed with the Fourth Circuit's determination that "not only did Ms. Hornot knowingly fail to tell the truth in her petition, she did so with reckless disregard for the truth [and] that there was no valid basis upon which the claims could have been made truthfully." Further, the trial court concluded, as noted above, that the filing of the claim in the Nineteenth Judicial District Court, two years after filing a similar suit that was dismissed with such scathing comments by the Fourth Circuit, was a "pure and blatant 863 violation" and that this is "the precise type of conduct that Article 863 seeks to avoid." The trial court determined that sanctioning Ms. Hornot to pay Mr. Cardenas \$15,000.00 was appropriate under the facts to achieve

the purpose of Article 863. After reviewing the record herein, we find no abuse of the trial court's discretion in setting this amount.

Ms. Hornot also asserts on appeal that the trial court erred in excluding from evidence certain documents and testimony relating to garnishment of the settlement funds held in Mr. Cardenas' client trust account. The trial court ruled that the evidence, which related to collection of the judgment in the Orleans Parish suit, was not relevant to the narrow issue that was before the court on remand, which was whether sanctions under Article 863 should be imposed.²

Generally, all relevant evidence is admissible. La. C. E. art. 402. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. La. C.E. art. 401. Whether evidence is relevant is within the discretion of the trial court, and its ruling will not be disturbed on appeal in the absence of a clear abuse of discretion. Boudreaux v. Mid-Continent Casualty Company, 05-2453, p. 8 (La. App. 1st Cir. 11/3/06), 950 So. 2d 839, 845, writ denied, 06-2775 (La. 1/26/07), 948 So. 2d 171.

From our review of the record, we find no abuse of discretion in the trial court's ruling. As recognized by the trial court, the sole issue before the court on remand was whether Article 863 sanctions should be imposed. The documentary evidence and testimony, which Ms. Hornot sought to be admitted into evidence at the sanctions hearing, related to the garnishment of the settlement funds in Mr. Cardenas' client trust account for collection of the judgment rendered in the

² At the beginning of the hearing on Article 863 sanctions, the trial court addressed a motion for protective order filed by Mr. Cardenas. The subject of the protective order was a request by Ms. Hornot for discovery related to garnishment pleadings filed in connection with the judgment rendered in the Orleans Parish suit. The trial court ruled that the evidence was not relevant to the issue before it on remand, and therefore granted Mr. Cardenas' motion for protective order. However, because Ms. Hornot was already in possession of certain documents related to the garnishment proceeding that she wanted to introduce into evidence, and wanted to cross-examine Mr. Cardenas regarding these documents and proceedings, this ruling really went more to the admissibility of evidence at trial.

Orleans Parish suit. Ms. Hornot asserts that this evidence is relevant in determining the amount of sanctions that should be imposed, citing Dubois, 01-0816 at p. 4, 818 So. 2d at 867, because such seizure already constitutes severe punishment. However, like the trial court, we do not find the fact that Mr. Cardenas obtained a judgment against Ms. Hornot in the Orleans Parish suit, and instituted a garnishment action to collect on that unrelated judgment, is relevant to any issue before the court on remand. As noted by the trial court, whether Mr. Cardenas had a right to collect on an unrelated judgment is something that needed to be addressed in the Orleans Parish suit, not in a collateral proceeding in the Nineteenth Judicial District Court. Therefore, we find no abuse of discretion in the trial court's ruling excluding from evidence certain documents and testimony relating to garnishment of the settlement funds held in Mr. Cardenas' client trust account.

Finally, Mr. Cardenas asserts in his appellate brief that additional sanctions should be imposed against Ms. Hornot, because her continued assertions and allegations on appeal are false and are entirely without merit. However, the ability to impose sanctions under Article 863 is limited to the trial court. An appellate court's authority to regulate conduct before it is governed by La. C.C.P. art. 2164, which provides in pertinent part, that "the [appellate] court may award damages ... for frivolous appeal." In re Succession of Badeaux, 08-1085, p. 6 (La. App. 1st Cir. 3/27/09), 12 So. 3d 348, 353, writ denied, 09-0822 (La. 5/29/09), 9 So. 3d 166. However, Article 2164 damages are not proper where the party does not appeal or answer the appeal. Because Mr. Cardenas did not answer Ms. Hornot's appeal, his claim for damages for frivolous appeal is not properly before this court. See Schulingkamp v. Schulingkamp, 96-2680, p. 4 (La. App. 1st Cir. 12/29/97), 706 So. 2d 1005, 1007, writ denied, 98-0279 (La. 3/20/98), 715 So. 2d 1219.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court ordering Janice Hornot to pay \$15,000.00 in sanctions to Leonard Cardenas, III, plus all costs and judicial interest on the sanctions award from date of judicial demand. All costs of this appeal are assessed to Janice Hornot.

AFFIRMED.