

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA**BARBARA WARNER, and
ROY WARNER,****Plaintiffs,**

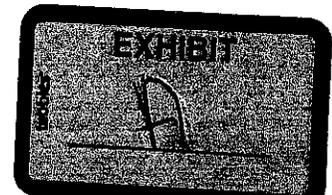
vs.

06-C-216

**LEROY WINGFIELD, JR., and
SUSAN WINGFIELD,****Defendants.****ORDER**

On March 28, 2007 the Defendants, by counsel, Stephen Jory, Esq, moved this Court for sanctions under Rule 11 of the West Virginia Rules of Civil Procedure. The Court subsequently heard arguments for sanctions on April 17, 2007. During the hearing on the motion for Rule 11 sanctions, this Court granted the motion and scheduled another hearing to provide the Plaintiffs and their former counsel, Erika Klie, Esq. a chance to show cause why they should not have sanctions imposed upon them. Following the hearing on the motion for sanctions, counsel for the Defendants submitted a memorandum on May 9, 2007, and Plaintiffs' counsel, Jefferson Triplett, Esq. submitted a memorandum on May 17, 2007, regarding the issue of sanctions. The show cause hearing was scheduled on August 27, 2007. Ms. Klie filed a response to the motion for sanctions on August 21, 2007, some four months after the initial hearing on the motion for sanctions and six days prior to the second hearing regarding this issue. Upon hearing the evidence at the show cause hearing, the Court granted sanctions. Against whom the sanctions should be awarded and the amount of such sanctions was taken under advisement. This Order reflects the Court's opinion in that regard.

This case began between neighbors who unfortunately have a great deal of animosity toward each



other. The rightness or wrongness of that animosity, its cause or who is at fault, is not for the Court to decide. What this Court must decide is whether or not Rule 11 sanctions should be imposed for the actual lawsuit that was filed and, if so, against whom.

This suit was filed before this Court on October 10, 2006. The initial Complaint specified five causes of action against the Wingfields. The Plaintiffs alleged (1) invasion of privacy, (2) trespass, (3) assault, (4) tort of outrage, and (5) interference with a right of way. The Court notes that the complaint was not verified by the Plaintiffs, rather it was simply signed by Plaintiffs' counsel, Ms. Klie. Defendants filed a timely answer on October 20, 2006 and the Court subsequently set the matter for a scheduling conference for November 27, 2006. Ms. Klie moved the Court to continue the scheduling conference and the Court did so by order of November 13, 2006. The Court rescheduled the matter for a December 18, 2006 scheduling conference. Again, Plaintiffs' counsel, Ms. Klie, moved the Court for a continuance of the scheduling conference, even though that was a date her office had previously approved. The Court wrote Ms. Klie a letter dated December 8, 2006, indicating the matter was rescheduled for January 8, 2007 and asked Ms. Klie to evaluate "whether or not she had adequate time to represent the Plaintiffs."

The Court finally set the matter for a trial date of October 16, 2007. Depositions were set for January 19, 2007. After the depositions, on January 24, 2007, the Plaintiffs moved to dismiss the assault claim from the previously filed complaint. After taking the depositions of the Plaintiffs, the Defendants filed a Motion for Summary Judgment on March 12, 2007. Significantly, along with the Motion for Summary Judgment, the Defendants produced evidence that both Plaintiffs gave deposition testimony that factually would not support any of the five (5) causes of action alleged in the complaint. Plaintiffs' counsel filed no response. Plaintiffs, by their counsel Ms. Klie, then filed a Notice of Voluntary Dismissal without Prejudice.

on March 27, 2007. The Defendants properly objected to the Notice of Voluntary Dismissal on March 27, 2007, as it was not properly filed as required by the West Virginia Rules of Civil Procedure. The Defendants followed up the objection with the Motion for Sanctions against the Plaintiffs and their attorney, Ms. Klie.

As noted, on August 27, 2007, the Court heard arguments regarding sanctions from Mr. Jory, on behalf of the Defendants, Mr. Jefferson Triplett, on behalf of the Plaintiffs, and Ms. Klie on her own behalf. The Court took the matters under advisement for more thorough review of record.

After thorough review of the file, the Court is of the opinion that sanctions should not be imposed upon Mr. and Mrs. Warner. In this respect, the Court finds that the Warners clearly sought legal advice by consulting three different attorneys. As noted by Plaintiff's current counsel Mr. Jefferson Triplett, the Warners are not attorneys. They simply sought legal advice for their problems because they did not know their legal remedies. The Warners sought the advice of Mr. George Triplett, but their consultation with Mr. George Triplett was quite limited. The Warners consulted another attorney. This attorney apparently wrote one letter on behalf of the Warners.

The Warners then sought the advice of Ms. Klie, who filed this civil action on their behalf. The Warners never verified the Complaint filed in this matter and they say they never saw the complaint before it was filed. Additionally, the Warners say they never even met Ms. Klie before she filed this complaint, but only met with a member of her staff and did not meet with Ms. Klie personally until November 17, 2006. Ms. Klie denies this. During depositions taken by Mr. Jory, the Plaintiffs answered truthfully to all claims filed in this matter. Such testimony indicated that all factual allegations contained in the Complaint were inaccurate and did not support any of the causes of action. The Court believes that the Plaintiffs did not

intend to commit such acts as would justify the imposition of Rule 11 sanctions, rather they placed their trust in Ms. Klie to follow the proper course of legal action. This being the case, the Court will not levy sanctions against them simply for their ignorance of the intricacies of the legal system.

As to Ms. Klie, the Court finds that sanctions are properly imposed upon her for the filing of frivolous and baseless claims before this Court. Ms. Klie filed a five count complaint alleging, among other things, assault and the tort of outrage, but Ms. Klie indicated to the Court that "all we wanted was for the Defendants to purchase a couple gallons of paint and paint the fence." The Court does not believe that the relief sought justified the serious allegations made in the complaint, which were completely unfounded. Ms. Klie indicated to the Court that the tort of outrage claim was supported by pictures of Mrs. Wingfield spray painting the fence. The Court believes that the tort of outrage requires more.

Ultimately, after hearing the arguments of all parties and after thorough review of the case file, the Court is of the opinion that, in accordance with Rule 11 of the West Virginia Rules of Civil Procedure, sanctions should be imposed upon Erika Klie, Esq. for the Wingfields' reasonable legal fees in defending themselves in this civil action.

The Court notes initially that a "circuit court has discretion to impose attorney's fees on litigants who bring vexatious and groundless lawsuits." *State ex rel. Roy Allen S. v. Stone*, 196 W.Va. 624. In this regard, a "court may order payment by an attorney to a prevailing party reasonable attorney fees and costs incurred as the result of his or her vexatious, wanton, or oppressive asserting of a claim or defense that cannot be supported by a good faith argument for the application, extension, modification, or reversal of existing law." *Pritt v. Suzuki Motor Co., Ltd.*, 204 W.Va. 388. The Court finds as a matter of law that Ms. Klie brought a completely groundless lawsuit and this Court in its discretion imposes the Defendants

reasonable legal fees as a sanction upon her. The Court finds that she utterly failed to make an "inquiry reasonable under the circumstances" as required by Rule 11(b) of the West Virginia Rules of Civil Procedure.

Prior to filing the complaint, Ms. Klie failed to do a cursory investigation of the claims contained therein. Count 3 of the complaint, for Assault, was voluntarily dismissed because Ms. Klie did not investigate the allegation. Ms. Klie says this error was due to a miscommunication, but has no explanation for such miscommunication. As indicated previously, all claims contained in the Complaint were admitted by the Plaintiffs to be false. Had Ms. Klie done her work on the case, she should have realized the claims were wholly without merit. The Court can only speculate as to why Ms. Klie did not investigate the claims contained in the Complaint, but will not do so.

The lack of thorough preparation in this matter is especially disconcerting once the Court takes into consideration Ms. Klie's claim that she spent approximately 153 hours working on this case. Ms. Klie proffered this information to the Court on two separate occasions, but could not produce any documentary evidence for the basis of such claims. The only billing records submitted by Ms. Klie are for a total of 12.4 hours for the period through the end of October 2006, leaving over 140 hours unaccounted for. Although Ms. Klie said in April that she reviewed the time sheets to get the 153 hour figure, she has never produced them. At the hearing on August 27, 2007, she said the 153 hour figure was merely an estimate. These statements leave much to be desired. Nothing contained in the file would even remotely justify her claims of 153 hours of work. In these months after the hearing, the Court, regrettably, has seriously questioned the accuracy and truthfulness of Ms. Klie's statements to the Court. The Court thoroughly reviewed a transcript of the hearing and questioned Ms. Klie's candor with the Court.

The Court notes that Ms. Klie produced no evidence to support her claim. Ms. Klie could not produce any work product. Indeed, she could not even produce time sheets verifying the amount of time spent on this case. Time sheets are of paramount importance to a law practice. Mr. Jory submitted his time sheet records to the Court, indicating, that as of April 17, 2007, he had spent 54.1 hours investigating, preparing discovery, filing a motion for summary judgment in this matter, and filing the motion for sanctions. In the Court's opinion, Mr. Jory's time expenditure seems completely reasonable in light of his records and his work product. On the other hand, Ms. Klie reports her hours at three times that of Mr. Jory, yet she has absolutely nothing to show for it.

In Defendants' Memorandum Regarding Sanctions, Mr. Jory referred to the 153 hour claim by Ms. Klie as "totally fabricated." This Court finds no evidence to disagree with Mr. Jory's assessment. This being the case, the Court hereby ORDERS that Erika Klie, Esq. be SANCTIONED in the amount of \$12,236.33, the Defendant's reasonable legal fees incurred to date in defending themselves in this civil action. The Court ORDERS that this be paid in a reasonable amount of time and, if not, and on a motion of the Defendants the Court will grant judgment for that amount.

It is, SO ORDERED.

The Clerk of this Court shall forward copies of this Order to counsel for the Defendants, Stephen Jory, Esq, counsel for the Plaintiffs, Jefferson Triplett, Esq., and to Erika Klie, Esq.

Enter this 21st day of December, 2007

Jory
Triplett
Klie

A TRUE COPY:
ATTEST:
PHILIP D. RIGGLEMAN
CLERK OF THE CIRCUIT COURT
BY Jeff Moore DEPUTY



John Henning
JUDGE

ENTERED

DEC 21 2007
Civil ORDER BOOK
NUMBER 83 PAGE
PHILIP D. RIGGLEMAN, CLERK
By: Jeff Moore Dep