

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

KENNEDY NHLIZIYO,	:	APPEAL NO. C-180059
	:	TRIAL NO. A-1407210
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
“ADVANCE FEE FRAUD” on the	:	
website	:	
419advancefeefraud.blogspot.com,	:	
	:	
and	:	
“MYSTERYQUEST1” on the website	:	
419advancefeefraud.wordpress.com,	:	
	:	
Defendants-Appellants,	:	
	:	
and	:	
	:	
“INDIGO” on the website	:	
419scammersexposed.com,	:	
	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Alphonso Quashie has appealed from the trial court’s denial of his motion for sanctions against plaintiff-appellee Kennedy Nhliziyo.

Nhliziyo filed suit against three John Doe defendants, raising claims for defamation, defamation per se, and tortious interference with existing and prospective economic and/or business relationships. The claims alleged that the defendants, using online aliases, had defamed Nhliziyo and his business on various

websites. Asserting that he was unable to determine the defendants' identities or residences, Nhliziyo filed a motion to serve the defendants by publication. The trial court granted the motion. The court then granted Nhliziyo's motion for a default judgment and issued a permanent injunction against the defendants after no answer was filed following service by publication.

After the default judgment was granted, an anonymous individual filed a motion on behalf of "Advance Fee Fraud" and "Mysteryquest1," two of the alleged aliases of the John Doe defendants, seeking permission to file documents under seal and to have references to the individual's name and location redacted. Following the trial court's denial of this motion, Alphonso Quashie came forward and filed a motion to vacate the trial court's judgment on behalf of himself as a defendant operating under the aliases of Advance Fee Fraud and Mysteryquest1.

In the motion to vacate, Quashie argued that the trial court never acquired jurisdiction over him and that service had never been perfected. He argued, among other things, that service by publication was not permitted against a John Doe defendant. In an entry denying Quashie's motion, the trial court specifically determined that Quashie had been properly served by publication and that the court had acquired jurisdiction over him. Quashie appealed from that entry, but his appeal was dismissed as moot on the unopposed motion of Nhliziyo after the trial court vacated its default judgment and permanent injunction based on an agreed entry of the parties. The case was dismissed without prejudice. Thus, through the voluntary actions of the parties, we did not determine the merits of his appeal.

Quashie then filed a motion for an award of sanctions pursuant to R.C. 2323.51 and Civ.R. 11. As relevant to this appeal, he argued in the motion for sanctions that Nhliziyo and counsel had engaged in frivolous conduct under R.C. 2323.51 and violated Civ.R. 11 by obtaining service by publication, which he alleged was not authorized. The trial court denied the motion for sanctions. Quashie appealed.

In his first four assignments of error, Quashie attacks the trial court's determination in the underlying action that it had acquired personal jurisdiction over him and that service by publication was proper. But Quashie entered into an agreed judgment entry which rendered moot his appeal from the trial court's judgment in the underlying action. The only issue before this court on appeal is whether Quashie was entitled to sanctions under either R.C. 2323.51 or Civ.R. 11, and we therefore examine the conduct of the plaintiff and his counsel with respect to issues concerning service and jurisdiction, not the rulings of the trial court.

As previously set forth, the trial court determined in the underlying action that service by publication was proper and that it had acquired personal jurisdiction over Quashie. While these determinations with respect to service and jurisdiction are not dispositive, and while we make no independent determination as to the merits of Quashie's arguments concerning service and jurisdiction, they do provide evidence for this court to consider when evaluating whether the conduct of Nhliziyo and his counsel was frivolous under R.C. 2323.51 and in violation of Civ.R. 11. The trial court found that the conduct was not frivolous.

Following our review of the record, we cannot say that the trial court erred in determining that the conduct of Nhliziyo and his counsel was not frivolous under R.C. 2323.51(A)(2)(a)(i)-(iv). *See Pitcher v. Waldman*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, ¶ 14-16. Given the trial court's findings with respect to service and jurisdiction, we cannot find that "no reasonable lawyer would have brought the action in light of the existing law." *Id.* at ¶ 15. Nor did the trial court abuse its discretion in determining that the conduct of Nhliziyo's counsel was not in violation of Civ.R. 11. *See Riston v. Butler*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, ¶ 9 (1st Dist.). The first, second, third, and fourth assignments of error are overruled.

Quashie argues in his fifth assignment of error that the trial court erred in ruling that the default judgment entered against him was legal, specifically

contending that a default judgment entered against a John Doe defendant based on service by publication was improper. But it is the conduct of Nhliziyo and his counsel, and not the merits of the trial court's grant of a default judgment, that are before this court for review. We interpret Quashie's assignment of error to argue that the conduct of Nhliziyo and his counsel in moving for a default judgment after obtaining service by publication was frivolous and in violation of Civ.R. 11.

Nhliziyo, through counsel, moved for a default judgment after the trial court determined that service was proper and that the court had acquired jurisdiction over Quashie. Given that a court had already approved his method of service, we cannot find that the trial court erred in determining that the conduct of Nhliziyo and his counsel was not frivolous. *See Pitcher* at ¶ 16. Nor did the trial court abuse its discretion in determining that the actions of Nhliziyo's counsel were not in violation of Civ.R. 11. *See Riston* at ¶ 9. The fifth assignment of error is overruled.

In his sixth assignment of error, Quashie argues that the trial court erred in ruling that he had not cited any authority regarding malicious injury. Quashie's argument concerns frivolous conduct as set forth in R.C. 2323.51(A)(2)(a)(i). This assignment of error has no merit and is rendered moot by our resolution of the first four assignments of error. We therefore decline to address it.

The judgment of the trial court is accordingly affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on November 7, 2018
per order of the court _____.

Presiding Judge