IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

FEDERAL NATIONAL MORTGAGE ASSOCIATION,	:	APPEAL NO. C-180473 TRIAL NO. A-1400217
Plaintiff,	:	
	:	*O P I N I O N.*
vs.	:	
GERALD HIRSCHHAUT, et al.,	:	
Defendants,	:	
and	:	
VICTORY COMMUNITY BANK,	:	
Defendant/Cross-Claim Plaintiff/Counterclaim Defendant-Appellee,	:	
and	:	
MICHAEL KREINES, TRUSTEE,	:	
Defendant/Cross-Claim Defendant/Counterclaim Plaintiff-Appellant,	:	
and	:	
TODD MCMURTRY,	:	
Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 4, 2019

John E. Stillpass, Attorneys at Law, and *Scott H. Kravetz*, for Plaintiff-Appellant,

Finney Law Firm, LLC, Christopher P. Finney and *Brian C. Shrive*, for Defendant-Appellee Victory Community Bank,

Montgomery, Rennie & Jonson, George D. Jonson and *G. Todd Hoffpauir*, for Appellee Todd McMurtry.

MYERS, Judge.

{¶1} Michael Kreines appeals the judgment of the Hamilton County Common Pleas Court denying his motion for sanctions for frivolous conduct against Victory Community Bank ("VCB") and Todd McMurtry, a lawyer who represented VCB in the trial court. For the reasons that follow, we affirm the trial court's judgment.

I. The Trial-Court Proceedings

{¶2} In January 2014, Federal National Mortgage Association ("FNMA") filed an in rem foreclosure action against property owned by Leah Siegel, deceased ("the property"), naming as defendants VCB, the holder of a second mortgage on the property, and "Michael Kreines, Trustee" ("Kreines"), the then-titled owner of the property, along with others.

A. VCB's Cross-Claim against Kreines

{¶3} VCB filed an answer to FNMA's complaint and a cross-claim against Kreines, asserting a claim for in rem foreclosure and tort claims for fraudulent inducement, civil conspiracy, and tortious interference with a contract. The matter before us concerns these ancillary tort claims.

{¶4} In its tort claims, VCB alleged that during December 2003 and January 2004, Siegel had applied to VCB for a personal line of credit in the amount of $28,500. VCB informed Siegel that because the real property was not titled in her name, but rather held in a trust administered by Kreines, VCB was unwilling to extend her the loan. To obtain the loan, Siegel arranged with Kreines to transfer the property back to her. That transfer occurred on January 4, 2004.

{¶5} On January 9, 2004, five days after the transfer, Siegel and VCB entered into a credit agreement, which was secured by a mortgage on the property.

As a condition of both the credit agreement and mortgage, Siegel agreed not to materially affect the collateral or VCB's rights in the collateral by, among other things, "transfer of title or sale of the dwelling."

{¶6} VCB alleged that it had relied on Siegel's promise not to transfer the property when it agreed to extend credit to her. VCB claimed it would not have provided the loan if Siegel had intended to transfer the property out of her name and back to the trust.

{¶7} VCB alleged that at the time Siegel entered into the credit agreement, she and Kreines harbored a secret intent to transfer the property from Siegel back into the trust. Then, on June 11, 2004, less than six months after promising not to transfer the property, Siegel did in fact transfer the property back to the trust. VCB claimed this was a breach of the credit agreement and the mortgage that impaired VCB's interest in the collateral.

{¶8} VCB alleged that, despite defaulting on the mortgage, Siegel had continued to benefit from the credit agreement secured by the mortgage. By July 2011, Siegel had withdrawn the last remaining funds available under the agreement.

{¶9} When Siegel died on May 16, 2013, she owed more than $28,000 under the credit agreement.

B. Kreines's Motions to Dismiss and for Sanctions

{¶10} Kreines filed a Civ.R. 12(B)(6) motion to dismiss VCB's cross-claim and a motion for sanctions against VCB under Civ.R. 11 and R.C. 2323.51, alleging that VCB had engaged in frivolous conduct by filing a cross-claim that was "void of both legal merit and factual merit." Following a hearing, the trial court denied Kreines's motion to dismiss and motion for sanctions.

C. Kreines's Counterclaim against VCB

{¶11} Following the denial of his motion to dismiss, Kreines filed an answer to VCB's cross-claim and a counterclaim against VCB, asserting claims for frivolous conduct and abuse of process. Kreines again alleged that VCB's filing of the tort claims constituted frivolous conduct under Civ.R. 11 and R.C. 2323.51.

D. Kreines's Motion for Summary Judgment on VCB's Cross-Claim

{¶12} Kreines filed a motion for summary judgment on VCB's cross-claim as to each of the tort claims. In his supporting affidavit, he averred that he had made no representations to VCB about the credit agreement or about his or Siegel's intentions with regard to transfers of her property into or out of the revocable trust.

{¶13} VCB then moved pursuant to Civ.R. 56(F) to deny the motion or to continue the case for additional discovery. After taking Kreines's deposition, VCB filed nothing in opposition to Kreines's summary-judgment motion, and the trial court entered judgment in favor of Kreines on VCB's tort claims.

E. VCB's Motion for Judgment on the Pleadings

{¶14} VCB moved pursuant to Civ.R. 12(C) for a judgment on the pleadings with respect to Kreines's counterclaim for frivolous conduct and abuse of process. After a hearing, the trial court granted VCB's motion for judgment on the pleadings as to Kreines's counterclaim for frivolous conduct, but denied the motion as to the abuse-of-process claim.

F. Kreines's Second Motion for Sanctions

{¶15} Kreines filed a motion for sanctions against VCB and McMurtry for frivolous conduct under R.C. 2323.51 and Civ.R. 11, again arguing that VCB's tort claims against him were legally groundless and reiterating his arguments from his unsuccessful Civ.R. 12(B)(6) motion to dismiss. As further support for his motion,

Kreines pointed to the court's entry of summary judgment in his favor on all of VCB's tort claims against him.

{¶16} VCB responded to Kreines's motion for sanctions with affidavits by McMurtry and by David E. Gerner, an attorney specializing in residential, business, commercial, and industrial real estate law, and with copies of correspondence between the parties after Siegel's death in May 2013.

{¶17} The correspondence revealed that on September 26, 2013, months before FNMA initiated its January 2014 foreclosure action, attorney Louis Katz, counsel for Siegel, emailed Carlos Wessels, then counsel for VCB, regarding Siegel's estate, asserting that "[t]here is effectively no money in the estate and the property is clearly underwater." In response, Wessels stated that Katz should let him know whether Katz's client was interested in responding to the bank's settlement proposal. Wessels stated, "Otherwise, the bank intends to file a collection suit against Ms. Siegal's [sic] estate, any trusts that were created to receive and shelter assets, and any persons to whom assets were transferred." Wessels requested that Katz provide him with copies of Siegel's will and any trust documents.

{¶18} On October 1, 2013, Katz indicated that "[t]here are no Trusts and no transfers to Trusts." Wessels replied, asking Katz to "explain the transfer of the real property to Michael Kreines, Trustee[,] and how that comports with your statement that 'there are no trusts and no transfers to trusts.' " Wessels again requested a copy of Siegel's will and any trust agreements.

{¶19} McMurtry averred in his affidavit that he had been retained by VCB in January 2014 to answer FNMA's complaint, and that he had written to Katz in an attempt to settle VCB's claim before VCB answered FNMA's complaint. Katz replied that there had never been any assets in the trust other than the real estate.

{¶20} McMurtry also averred that, after reviewing the correspondence between Katz and Wessels, "[t]he fact that Mr. Katz failed to produce any of the

information requested and instead threatened sanctions raised my suspicions that the documentation Victory sought would support Victory's position as outlined in the Cross-claim." McMurtry stated that, prior to filing the cross-claim, he had interviewed his client, evaluated relevant documentation, and researched available causes of action. He asserted that he had not filed the cross-claim for purposes of delay or to harass or maliciously injure Kreines, and that the cross-claim and his conduct were warranted under existing law.

{¶21} VCB argued that, well before it filed the cross-claim, it had sought to obtain from Kreines or his counsel records relating to the trusts involved, but they had refused to provide supporting documentation. VCB asserted that, despite its pre-suit efforts to obtain information about the trust, it was only through the filing of the action and the course of discovery that the nature and extent of Kreines's status as trustee was revealed.

G. VCB's Motion for Summary Judgment on Kreines's Counterclaim

{¶22} VCB moved for summary judgment on Kreines's abuse-of-process counterclaim. VCB argued that the undisputed facts demonstrated that it did not try to accomplish an ulterior purpose by pursuing its cross-claims. It supported the motion with Kreines's interrogatory responses. The trial court granted the motion.

H. Newly Assigned Judge Rules on Kreines's Motion for Sanctions

{¶23} In January 2018, the trial judge recused himself from the case, and the matter was assigned to a different trial judge in March 2018. In July 2018, the newly assigned trial judge denied Kreines's pending motion for sanctions. This appeal followed.

II. The Appeal

{¶24} In four assignments of error, Kreines argues that the trial court erred by (1) denying his motion for sanctions under R.C. 2323.51(A), (2) denying his motion for sanctions under Civ.R. 11 without a hearing, (3) denying his motion for sanctions on the grounds that the matter had already been determined, and (4) granting VCB's motion for judgment on the pleadings as to his counterclaim for sanctions.

A. R.C. 2323.51 Motion for Sanctions

{¶25} In his first assignment of error, Kreines argues that the trial court erred by overruling his motion for sanctions because the conduct of VCB and McMurtry was frivolous under R.C. 2323.51(A)(2).

{¶26} The standard of review to be applied to a trial court's decision on a request for sanctions under R.C. 2323.51 depends on whether there are questions of law or of fact or mixed questions of law and fact. *Gearheart v. Cooper*, 1st Dist. Hamilton Nos. C-050532 and C-060170, 2007-Ohio-25, ¶ 25. We review purely legal questions de novo. *Riston v. Butler*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, ¶ 22 (1st Dist.). On factual issues, we give deference to the trial court's factual determinations, which we will not disturb if they are supported by competent, credible evidence. *Pitcher v. Waldman*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, ¶ 16.

{¶27} The ultimate decision as to whether to grant sanctions under R.C. 2323.51 rests within the sound discretion of the trial court. *217 Williams, LLC v. Worthen*, 1st Dist. Hamilton No. C-180101, 2019-Ohio-2559, ¶ 17. An abuse of discretion occurs if the trial court's decision is "unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶28} A motion for sanctions under R.C. 2323.51 requires a trial court to determine whether the challenged conduct constitutes frivolous conduct as defined in the statute, and, if so, whether any party has been adversely affected by the frivolous conduct. *Riston* at ¶ 17. R.C 2323.51(A)(2)(a) defines frivolous conduct as conduct that satisfies at least one of the following conditions:

> (i) [i]t obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation[;]
>
> (ii) [i]t is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law[;]
>
> (iii) [t]he conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[;]
>
> (iv) [t]he conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

R.C. 2323.51(A)(2)(a).

1. R.C. 2323.51(A)(2)(a)(ii)

{¶29} The main thrust of Kreines's first assignment of error is that the trial court erred in failing to award sanctions because the conduct of VCB and McMurtry in bringing the tort claims against him was legally groundless and therefore frivolous

as defined in R.C. 2323.51(A)(2)(a)(ii). Because legally groundless frivolous conduct involves a question of law, we review it de novo. *Riston*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, at ¶ 22. The test is whether no reasonable lawyer would have brought the action in light of existing law. *Pitcher*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, at ¶ 15.

a. Fraudulent Inducement

{¶30} Kreines contends that VCB's fraudulent-inducement claim was legally groundless. The elements of a fraudulent-inducement claim are as follows: (1) an actual or implied false representation concerning a fact or, where there is a duty to disclose, concealment of a fact, material to the transaction; (2) knowledge of the falsity of the representation or such recklessness or utter disregard for its truthfulness that knowledge may be inferred; (3) intent to induce reliance on the representation; (4) justifiable reliance; and (5) injury proximately caused by the reliance. *Information Leasing Corp. v. Chambers*, 152 Ohio App.3d 715, 2003-Ohio-2670, 789 N.E.2d 1155, ¶ 84 (1st Dist.). Kreines argues that VCB's fraudulent-inducement claim was frivolous because he had made no representations, let alone false ones, and owed no duty to VCB.

{¶31} At the time that VCB and McMurtry filed the cross-claim, we find that they could have reasonably believed that Kreines may have assisted Siegel in misrepresenting that the property would be transferred to Siegel and would remain in her name, in order to persuade VCB to enter into the credit agreement. Despite pre-suit efforts, counsel for VCB was unable to get any cooperation from Kreines's counsel that would allow him to evaluate the merits of any claim. In fact, counsel denied even that a trust existed. This alone was sufficient to raise red flags when VCB learned that not only did a trust exist, but the property had been transferred to it.

{¶32} In addition, VCB and McMurtry had reason to believe that Kreines and Siegel had concealed from VCB their intent to transfer the property back into the trust, knowing that VCB would not have entered into the credit agreement unless Siegel owned the property in her personal capacity. To the extent that Siegel conspired with Kreines to defraud VCB about the ownership of the property, Siegel's fraudulent actions are attributable to Kreines. *See Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 476, 700 N.E.2d 859 (1998). Consequently, we cannot say that the fraudulent-inducement claim was legally groundless.

b. Tortious Interference

{¶33} Kreines also contends that VCB's claim for tortious interference with a contract was legally groundless. The elements of a tortious-interference claim are (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) the lack of justification, and (5) resulting damages. *Alexander v. Motorists Mut. Ins. Co.*, 1st Dist. Hamilton No. C-110836, 2012-Ohio-3911, ¶ 33. Kreines argues that the tortious-interference claim was frivolous because the transfer of the property did not impair VCB's mortgage, and because the claim was barred by the statute of limitations.

{¶34} As a condition of the credit agreement and mortgage, Siegel agreed not to materially affect VCB's rights in the collateral by "transfer of title or sale of the dwelling." She agreed that transferring her interest in the property would result in a default under the terms of the mortgage. At the time that VCB and McMurtry filed the cross-claim, they reasonably believed that Kreines had knowingly caused Siegel to default by transferring title to the trust without informing VCB, and that in the years following the default, Siegel had continued to draw funds under the agreement until 2011. With respect to Kreines's claim that the tortious-interference claim was

time-barred, it is not precisely clear when the cause of action actually accrued because an argument could reasonably be made that it did not accrue until 2011, at the last withdrawal, and because a reasonable argument could be made that equitable tolling applied. *See Perkins v. Falke & Dunphy, LLC*, 2d Dist. Montgomery No. 25162, 2012-Ohio-5799, ¶ 12. Therefore, the tortious-interference claim was not legally groundless.

c. Civil Conspiracy

{¶35} Kreines also argues that VCB's civil-conspiracy claim was legally groundless because the alleged underlying torts of fraudulent inducement and tortious interference with contract were groundless. Given our determination that neither of those claims was legally groundless at the time alleged, Kreines's argument as to the conspiracy claim fails.

{¶36} We cannot conclude that no reasonable lawyer would have filed the fraudulent-inducement, tortious-interference, or civil-conspiracy claims, so they were not legally groundless under R.C. 2323.51(A)(2)(a)(ii). VCB's failure on the merits of its claims against Kreines does not, in and of itself, render its claims frivolous. *Pitcher*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, at ¶ 21.

2. R.C. 2323.51(A)(2)(a)(i)

{¶37} Kreines also argues that VCB's continued prosecution of meritless tort claims was merely to harass or maliciously injure or for other improper purposes, including causing unnecessary delay or a needless increase in the cost of litigation, and was therefore frivolous under R.C. 2323.51(A)(2)(a)(i). We review a trial court's determination of whether a party has engaged in conduct merely to harass or maliciously injure another for an abuse of discretion. *Riston*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, at ¶ 22.

{¶38} Here, we cannot say that the trial court abused its discretion in denying Kreines's motion under R.C. 2323.51(A)(2)(a)(i). VCB's pre-suit efforts to evaluate its position were stymied by Kreines's lack of cooperation. As soon as VCB was able to conduct sufficient discovery, including the deposition of Kreines, it apparently determined that the evidence did not warrant pursuing the case further, and it did not oppose Kreines's summary-judgment motion. Therefore, we hold that the trial court did not abuse its discretion by determining that VCB and McMurtry had not engaged in frivolous conduct for an improper purpose under R.C. 2323.51(A)(2)(a)(i).

3. R.C. 2323.51(A)(2)(a)(iii)

{¶39} Kreines also argues that VCB's allegations had no evidentiary support and are, therefore, frivolous as defined in R.C 2323.51(A)(2)(a)(iii). But Kreines did not raise this argument below, so he has waived his right to raise the argument here. *See Effective Shareholder Solutions, Inc. v. Natl. City Bank*, 1st Dist. Hamilton Nos. C-080451 and C-090117, 2009-Ohio-6200, ¶ 18.

4. No Hearing Required under R.C. 2323.51

{¶40} Kreines further argues that the newly assigned judge should have held a hearing on his motion for sanctions because she had not presided over the case until only the matter of sanctions remained. Kreines's argument presumes that the newly assigned judge did not review the record before denying his sanctions motion without a hearing. To the contrary, however, the trial court noted in its judgment entry that it had reviewed the entire record of the case and had fully considered Kreines's motion, the memorandum in opposition, and Kreines's reply memorandum. The court took "particular note that the previous trial court overruled Kreines'[s] prior motion for sanctions and that it ultimately granted

[VCB's] motion for summary judgment." Moreover, R.C. 2323.51 does not require that a hearing be conducted to determine whether conduct constituted frivolous conduct. *Pitcher*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, at ¶ 10.

5. No Error In Denying the R.C. 2323.51 Motion

{¶41} Having concluded that the trial court did not err in determining that VCB and McMurtry did not engage in frivolous conduct as defined in R.C. 2323.51(A)(2)(a), we hold that the court did not abuse its discretion by refusing to hold a hearing on the motion or to award sanctions under the statute. We overrule the first assignment of error.

B. Civ.R. 11

{¶42} In his second assignment of error, Kreines argues that the trial court erred by overruling his motion for sanctions under Civ.R. 11 without a hearing. He makes no further argument about the failure to hold a hearing. Instead, he refers this court to the argument advanced in the first assignment of error that "VCB's tort claims lacked good grounds when counsel signed to certify and file them."

{¶43} Civ.R. 11 provides, "Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name * * *." The attorney's signature constitutes certification by the attorney (1) that the attorney has read the pleading, motion, or document, (2) that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the pleading, motion, or document, and (3) that the pleading, motion, or document is not interposed for delay. Civ.R. 11; *Riston*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, at ¶ 9. A trial court's decision on a Civ.R. 11 motion for sanctions is reviewed under an abuse-of-discretion

standard. *DiBenedetto v. Miller*, 180 Ohio App.3d 69, 2008-Ohio-6506, 904 N.E.2d 554, ¶ 20 (1st Dist.).

{¶44} For the reasons set forth in our resolution of the first assignment of error, we hold that the trial court did not abuse its discretion in overruling Kreines's motion for sanctions under Civ.R. 11.

C. Law of the Case

{¶45} In his third assignment of error, Kreines argues that the trial court prejudicially erred in stating that the merits of the sanctions matter had previously been decided. He contends that the court improperly applied the law-of-the-case doctrine in denying his motion for sanctions.

{¶46} Kreines mischaracterizes the trial court's judgment entry overruling the motion for sanctions. While the trial court took note of the previously assigned judge's rulings, it is clear that the court based its determination on its independent review of the entire record and did not apply the law-of-the-case doctrine in ruling on the motion. We overrule the third assignment of error.

D. Judgment on the Pleadings

{¶47} In his fourth assignment of error, Kreines argues that the trial court erred to his "potential" prejudice by granting in part VCB's Civ.R. 12(C) motion for judgment on the pleadings as to his frivolous-conduct counterclaim. However, we lack jurisdiction to consider this assignment of error.

{¶48} The trial court's August 21, 2015 order granting partial judgment on the pleadings became final and appealable when it merged into the court's November 8, 2017 final order granting summary judgment in favor of VCB on Kreines's abuse-of-process counterclaim. *See Heaton v. Ford Motor Co.,* 2017-Ohio-7479, 96 N.E.2d 1191, ¶ 20 (8th Dist.) (holding that when a final judgment has been entered, all prior

interlocutory orders will merge into the final judgment and be appealable at that time). To invoke this court's jurisdiction to review the trial court's interlocutory ruling, Kreines was required to appeal it within 30 days of the date on which that order became final. *See* App.R. 3(A); App.R. 4(A)(2). Kreines did not list the 2017 order granting summary judgment on the notice of appeal filed in this case, and that notice was filed long after the deadline set forth in App.R. 4. *See Altman v. Parker*, 2018-Ohio-4583, 123 N.E.3d 382, ¶ 17 (1st Dist.). Therefore, we do not reach the merits of Kreines's fourth assignment of error.

Conclusion

{¶49} Consequently, we overrule the first, second, and third assignments of error and affirm the judgment of the trial court.

Judgment affirmed.

MOCK, P.J., concurs.
BERGERON, J., concurs separately.

BERGERON, J., concurring separately.

{¶50} I respectfully concur in Judge Myers's thoughtful opinion. I write separately, however, to express my concern about the tendency of sanctions to consume a proceeding. Sanctions should not become the sine qua non of a lawsuit and overshadow the balance of the case. *See Marconi v. Savage*, 8th Dist. Cuyahoga No. 102619, 2016-Ohio-289, ¶ 46, citing *Holloway v. Holloway Sportswear, Inc.*, 2012-Ohio-2135, 971 N.E.2d 1001, ¶ 29 (3d Dist.) ("To allow collateral proceedings on sanctions and fees to expand into a full blown relitigation of the underlying issues is not in accord with the purpose of the rule and statute[.]"); *see also Calypso Asset Mgt., LLC v. 180 Indus., LLC*, 2019-Ohio-2, 127 N.E.3d 507, ¶ 36 (10th Dist.) (citing *Marconi* and *Holloway* favorably relative to limiting discovery in the sanctions

context while noting that "[s]uch an approach prevents collateral proceedings on sanctions from expanding into full blown litigation.").

{¶51} When parties get too trigger-happy with sanctions, it evokes parallels to the story about the boy who cried wolf. Trial judges' eyes tend to glaze over when the third, fourth, or fifth application for sanctions arrives. And this is bad for clients as well as the overall system of justice. If a party or counsel truly commits a sanctionable offense, they should be held accountable under the governing rules and statutes. But a party can only cry "sanctions" credibly in extraordinary circumstances—wielding the claim as just another weapon in the litigation toolbox diminishes its effectiveness.

{¶52} The sanctions odyssey in this case proves my point. Sanctions were raised early and often. It began with the opening salvo in the litigation, with the Trustee demanding sanctions for frivolous conduct under Civ.R. 11 and R.C. 2323.51 by motion, incorporated into his motion to dismiss counts one, two, three and five of VCB's cross-claims, in March 2014. The trial court denied both motions in due course. The Trustee then answered VCB's cross-claims (as amended by agreed entry in the interim) and asserted counterclaims for frivolous conduct under Civ.R. 11 and R.C. 2323.51 and abuse of process in September 2014. VCB moved for judgment on the pleadings as to these counterclaims, which the trial court granted as to frivolous conduct but denied as to abuse of process.

{¶53} Unhappy with this result, the Trustee moved for reconsideration and/or Civ.R. 54(B) certification of the entry granting VCB's judgment on the pleadings in part, which the trial court denied in October 2016. Just over a week later, the Trustee lobbed in a stand-alone motion for sanctions under Civ.R. 11 and R.C. 2323.51 and a motion to amend his abuse of process counterclaim to add VCB's

president as a defendant. While the trial court denied the motion to amend, it did not take action on the motion for sanctions at that time.

{¶54} The Trustee's abuse of process counterclaim and motion for sanctions lingered for some time. VCB eventually moved for summary judgment on the remaining counterclaim in September 2017, which the trial court granted. About six months after that ruling, VCB moved to strike or in the alternative rule on the outstanding motion for sanctions. The trial court then hammered the final nail in the sanctions coffin, over four years from its inception, with a brief entry overruling the motion for sanctions that prompted this appeal.

{¶55} This abbreviated history gives a flavor for how much party and judicial resources were squandered in the quest for sanctions. Awarding sanctions in this case (if it were appropriate) would only reward this conduct and telegraph the message that a party can (perversely) benefit itself by raising the costs of litigation on both itself and its adversary. And while the Trustee faults the defendant and its counsel for (to borrow Justice Holmes's phrase) failing to "turn square corners" in this case, he turns a blind eye to his own shortcomings in this respect. *See Rock Island A. & L.R. Co. v. United States*, 254 U.S. 141, 143, 41 S.Ct. 55, 65 L.Ed. 188 (1920).

{¶56} At the outset, the Trustee refused to answer straightforward inquiries that might have put VCB at ease—needlessly prolonging the litigation. Once litigation was underway, the Trustee admits that his initial sanctions motion contained only "a one-line request for sanctions." When that half-hearted effort fell flat, he embarked on a series of successive bites at the apple—displaying a litigation strategy of recycling the same arguments over and over. The Trustee then pursued an appeal based on these same arguments, even as to a matter (the fourth

assignment of error) over which this court patently lacks jurisdiction. A party should always "stop" and "think" (to echo the Trustee's argument) and take a critical look at its own conduct before casting sanctions stones at its adversary for allegedly disregarding the rules and procedural requirements.

Please note:

The court has recorded its own entry on the date of the release of this opinion.