

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

DERECO EVANS,	:	APPEAL NO. C-160370
	:	TRIAL NO. A-1101017
Plaintiff,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
QUEST DIAGNOSTICS, INC.,	:	
	:	
and	:	
	:	
MEDPLUS, INC.,	:	
	:	
Defendants-Appellees,	:	
	:	
and	:	
	:	
HEALTH ALLIANCE OF GREATER	:	
CINCINNATI, et al.,	:	
	:	
Defendants.	:	

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.

Appellant Nadia Blaine, counsel of record for plaintiff Dereco Evans, appeals the trial court’s judgment imposing attorney fees and litigation costs against her personally under Civ.R. 11 and R.C. 2323.51. We affirm.

This appeal is the latest proceeding in a civil action begun in 2011. *See generally Evans v. Quest Diagnostics, Inc.*, 1st Dist. Hamilton No. C-140479, 2015-Ohio-3320. Evans was sexually assaulted while he was recovering from a gunshot wound in University

Hospital. The perpetrator, Chad Thrasher, was working as a phlebotomist at the hospital at the time of the assault. *See id.* Evans sued Thrasher and a number of other defendants, including defendants-appellees Quest Diagnostics, Inc., and MedPlus, Inc., (“Quest Diagnostics”), for damages arising from the assault. Evans’ claims against Quest Diagnostics were based on theories of negligent hiring and supervision of Thrasher. *See id.* at ¶ 3.

Quest Diagnostics has consistently maintained they did not hire or employ Thrasher, and thus could not be liable under Evans’ theory of the case. In late 2012, the trial court entered summary judgment on that basis. We affirmed the ruling on appeal, and the Ohio Supreme Court declined jurisdiction. *See id.*

Quest Diagnostics moved for sanctions against Blaine and Evans, pursuing claims against Blaine alleging that she had failed to determine Thrasher’s employer before bringing suit, and had failed to dismiss Quest Diagnostics after numerous communications and filings denying any employment or supervisory relationship with Thrasher. *See id.* at ¶ 5. In August 2015, this court remanded the matter to the trial court for it to conduct an evidentiary hearing on Quest Diagnostics’ renewed motion for sanctions solely against Blaine. *See id.* at ¶ 22.

The trial court complied with our mandate and imposed \$64,433.02 in attorney fees and \$2,928.52 in litigation costs against Blaine personally as counsel of record under Civ.R. 11 and R.C. 2323.51(B)(4). Blaine has appealed.

In two interrelated assignments of error, Blaine argues that the trial court erred by failing to conduct a full evidentiary hearing as mandated by this court, and by failing to consider the entire record submitted for its consideration. Both contentions are feckless.

As the parties acknowledge, a trial court has broad discretion to determine whether to award sanctions under Civ.R. 11 and R.C. 2323.51. *See State ex rel. Bell v.*

Madison Cty. Bd. of Commrs., 139 Ohio St.3d 106, 2014-Ohio-1564, 9 N.E.3d 1016, ¶ 10-11; see also *DiBenedetto v. Miller*, 180 Ohio App.3d 69, 2008-Ohio-6506, 904 N.E.2d 554, ¶ 20 (1st Dist.). An abuse of that discretion is shown when the court’s decision is unreasonable, arbitrary, or unconscionable; that is, when the trial court issues a ruling that is not supported by a “sound reasoning process.” *AAAA Ents., Inc. v. River Place Community Urban Redev. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

On February 18, 2016, the trial court conducted an evidentiary hearing on Quest Diagnostics’ pending motions for sanctions and costs. It heard testimony from Quest Diagnostics’ lead counsel, its attorney witness on the reasonableness of the incurred fees and costs, and Blaine.

In a detailed, eight-page written decision, the trial court found that a reasonable investigation would have revealed, early in the litigation, that Thrasher had not been employed or supervised by Quest Diagnostics—the linchpin of Evans’ claims against Quest Diagnostics. The court found that no reasonable lawyer would have failed to communicate with opposing counsel and make simple inquiries, available under the rules of discovery, to ascertain that fact. And no reasonable lawyer would have continued to pursue claims against Quest Diagnostics in light of the evidence actually presented in the case, the trial court’s previous summary-judgment ruling based upon the absence of an employer-employee relationship, and this court’s decisions affirming that ruling. See *Evans*, 1st Dist. Hamilton No. C-140479, 2015-Ohio-3320, at ¶ 3. The trial court concluded that this represented frivolous conduct under the applicable statute and civil rule. See *Riston v. Butler*, 149 Ohio App.3d 390, 2002-Ohio-2308, 777 N.E.2d 857, ¶ 36 (1st Dist.). The trial court then reviewed the reasonableness of the requested sanctions and imposed sanctions against Blaine.

Quest Diagnostics adduced ample evidence to support its allegations against Blaine and the reasonableness of the requested sanctions. The trial court's passing misstatement in its judgment entry concerning whether Blaine had conducted any discovery was not prejudicial to Blaine. Read in its entirety, the entry clearly reflects that the trial court had reviewed the entire record and understood that Blaine had attempted discovery on certain issues below. The basis of its decision to impose sanctions was undisturbed by this misstatement.

Thus the trial court's decision to impose an award of fees and expenses was supported by a sound reasoning process and this court will not disturb its decision. *See AAAA Ents., Inc.*, 50 Ohio St.3d at 161, 553 N.E.2d 597; *see also Hustler Cincinnati, Inc. v. Elm 411, LLC*, 1st Dist. Hamilton No. C-130754, 2014-Ohio-5648, ¶ 30. The first and third assignments of error are overruled.

In Blaine's second assignment of error, she contends that the trial court erred in granting Quest Diagnostics' motion to quash subpoenas that Blaine had served seeking testimony and documents from University Hospital's counsel, and from the temporary employment agency that had employed Thrasher.

Even if Quest Diagnostics lacked standing to file its motion to quash these subpoenas directed at third parties, Blaine was not prejudiced by the trial court's ruling. *See Hoerig v. Tiffin Scenic Studios, Inc.*, 3d Dist. Seneca No. 13-11-18, 2011-Ohio-6103, ¶ 21; *see also Civ.R. 45; Lambda Research v. Jacobs*, 170 Ohio App.3d 750, 2007-Ohio-309, 869 N.E.2d 39, (1st Dist.). The information sought in the subpoenas—whether University Hospital had an employment relationship with Thrasher—was simply not relevant to the trial court's mandate from this court to conduct a sanctions hearing on Blaine's alleged failure to properly investigate and prosecute this case against Quest Diagnostics. The second assignment of error is overruled.

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Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on November 23, 2016
per order of the court _____.
Presiding Judge