

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

PERRIN G. MARCH, IV, as the	:	APPEAL NO. C-160650
Successor Trustee of the Perrin G.	:	TRIAL NO. A-1209832
March, III, Revocable Trust,	:	
and	:	<i>JUDGMENT ENTRY.</i>
PERRIN G. MARCH, IV, as the	:	
Successor Trustee of the Maud Rydin	:	
March Revocable Trust,	:	
Plaintiffs-Appellees,	:	
vs.	:	
ALAN J. STATMAN,	:	
and	:	
STATMAN HARRIS & EYRICH, LLC,	:	
Defendants-Appellants,	:	
and	:	
CHRISTINA MARCH, et al.,	:	
Defendants.	:	

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

Defendants-appellants Alan J. Statman and his law firm, Statman Harris Eyrich, LLC, (collectively, “Statman”), appeal the trial court’s judgment denying their

motion for sanctions under R.C. 2323.51 and Civ.R. 11 against plaintiffs-appellees Perrin G. March, IV, as the successor trustee of the Perrin G. March, III, Revocable Trust, Perrin G. March, IV, as the successor trustee of the Maud Rydin March Revocable Trust (collectively “PMIV”) and against PMIV’s legal counsel. For the following reasons, we affirm the trial court’s judgment.

PMIV sued Statman for fraud and civil conspiracy with Michiel Schuitemaker in connection with the transfer of a \$17 million promissory note from PMIV’s father, Perrin March, III, (“PMIII”) to PMIV’s brother-in-law, Schuitemaker, for \$50,000. The promissory note had been obtained by PMIII after he had made several loans to the family company, Cincinnati, Inc. (“CI”). PMIV alleged that Statman had misrepresented the value of the note and that PMIII and his advisors, specifically, Rippe & Kingston, an accounting firm, relied on Statman’s misrepresentations in valuing the note. Following discovery, the trial court entered summary judgment in favor of Statman, concluding that there was no evidence that Statman had misrepresented the value of the note to PMIII or his advisors. This court affirmed the grant of summary judgment in *March v. Statman*, 1st Dist. Hamilton No. C-150337, 2016-Ohio-2846. Following this court’s decision, the trial court then considered Statman’s motion for sanctions under R.C. 2323.51 and Civ.R. 11.

In that motion, Statman maintained that PMIV had engaged in frivolous conduct by asserting claims against Statman that lacked evidentiary support and that were unwarranted under existing law. The trial court denied the motion, concluding that there was a “reasonable basis to bring and pursue the claims.” Statman now appeals.

In his first assignment of error, Statman contends that the trial court erred by denying his motion for sanctions under R.C. 2323.51.

A motion for sanctions under R.C. 2323.51 requires a 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 v. Butler*, 149 Ohio App.3d 390, 2002-Ohio -2308, 777 N.E.2d 857, ¶ 21 (1st Dist.). R.C. 2323.51(A)(2)(a)(i)-(iv) defines frivolous conduct as conduct by a party to a civil action: (i) that serves merely to harass or maliciously injure another party to the action or is used for another improper purpose; (ii) that is not warranted under existing law and cannot be supported by a good faith argument for a modification or establishment of new law; (iii) that consists of allegations or other factual contentions that have no evidentiary support; or (iv) that consists of denials or factual contentions that are not warranted by the evidence. *See Pitcher v. Waldman*, 1st Dist. Hamilton No. C-160245, 2016-Ohio-5491, ¶ 14.

In reviewing a trial court's determination that the conduct complained of does not amount to frivolous conduct, our standard of review depends on whether there are questions of law or fact, or mixed questions of law and fact. With respect to purely legal questions, we employ a de novo standard of review. *Id.* at ¶ 16. 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. *Id.*

Statman first argues that PMIV's assertion of claims for fraud and civil conspiracy against Statman constituted frivolous conduct under R.C. 2323.51(A)(2)(a)(iii) and (iv). R.C. 2323.51(A)(2)(a)(iii) and (iv) present factual questions—whether there was evidentiary support for the claims. We note that a party only needs minimal evidentiary support for its allegations or factual contentions in order to avoid a frivolous-conduct finding. *Carasalina LLC v.*

Bennett, 10th Dist. Franklin No. 14AP-74, 2014-Ohio-5665, ¶ 36. Here, the trial court determined that there was evidentiary support for PMVI's claims. We agree.

There was electronic mail between Statman, Schuitemaker and Ken Jenkins, PMIII's accountant, which demonstrated that Statman had advised Schuitemaker that the value of the note was "mere pennies" in light of the precarious financial condition of CI. Subsequently, Statman advised Schuitemaker that valuing the note at \$184,000 would be defensible against a challenge by the Internal Revenue Service that the transfer of the note was a gift—the implication being that the note was possibly worth even more than \$184,000. Next, although Jenkins testified during his deposition that no one, including Statman, had influenced his accounting firm's valuation of the note, Jenkins's email to Schuitemaker, which requested confirmation from Statman as to his opinion of the payment priority of the note in the event of CI's bankruptcy, belies this assertion. Furthermore, Jenkins asked for this confirmation just prior to changing the value of the note from \$1,000,000 to \$0. Finally, after the note had been transferred to Schuitemaker, Statman emailed Schuitemaker saying that "he loves it when a plan comes together" and asked whether Statman's fee would be a one-third of \$17 million. This email suggests that Statman may have believed the note to have a higher value than "mere pennies," and that he and Schuitemaker had worked in concert to obtain a reduced valuation of the note.

Statman next argues that PMIV's assertion of claims for fraud and civil conspiracy constituted frivolous conduct because the claims were not warranted under existing law. R.C. 2323.51(A)(2)(a)(ii) presents a purely legal question, and the test to determine whether a claim is frivolous is whether no reasonable lawyer would have brought the action in light of existing law. *Pitcher* ¶ 15-16.

We hold that the trial court did not err in concluding that it was not frivolous conduct under R.C. 2323.51(A)(2)(a)(ii) for PMIV to assert claims against Statman. As noted, there was evidentiary support for PMIV's claims. Although PMIV may not have prevailed at trial, this does not make his arguments frivolous. " 'R.C. 2323.51 does not purport to punish a party for failing on a claim or for making a misjudgment or tactical error.' " *Id.* at ¶ 21, citing *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. Warren No CA2013-03-025, 2014-Ohio-252, ¶ 10.

Statman also asserts that because PMIV's claims against him were essentially a claim for professional malpractice, and PMIV's claims were filed outside the application statute of limitations for a malpractice claim, then no reasonable lawyer would have brought the action. We find no merit to this argument. The allegations against Statman did not allege that he had breached a professional responsibility to PMIII, but rather that he had defrauded him.

Because there was evidentiary support for PMIV's claims against Statman, we cannot hold that no reasonable lawyer would have brought this action. Accordingly, the trial court did not err by denying Statman's motion for sanctions under R.C. 2323.51. The first assignment of error is overruled.

We also overrule Statman's second assignment of error, in which he maintains that the trial court erred by denying his motion for sanctions against PMIV's counsel under Civ.R. 11. Under Civ.R. 11, an attorney's signature on a pleading constitutes a certificate "that to the best of the attorneys * * * knowledge, information, and belief there is good ground to support it [,] and that it is not interposed for delay." Civ.R. 11 employs a subjective bad-faith standard to invoke sanctions by requiring that any violation of that rule must be willful. *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510, ¶ 19.

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Because we have determined that there was evidentiary support for PMIV's claims, we cannot say that PMIV's counsel willfully violated Civ.R. 11.

Therefore, the judgment of the trial court is affirmed.

Further, 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.

MILLER, P.J., DETERS and POWELL, JJ.

MICHAEL E. POWELL, of the Twelfth Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on May 31, 2017

per order of the court _____.
Presiding Judge