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Judge-ordered fee award vs. litigant tossed

Didn't have statutory authority to sanction

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A District Court litigant who executed on a civil money judgment that was dismissed years before by stipulation of the parties should not have been assessed attorneys' fees as a sanction for his conduct, the Appellate Division for the Northern District has ruled.

By the time the litigant, defendant Andrew Rodenhiser, contacted the lawyer who had handled the case 14 years earlier and asked him to execute on the judgment, the lawyer had disposed of the case file and could not recall the stipulation of dismissal. The attorney also apparently missed the stipulation when reviewing the court's file, as did the judge who issued the execution.

Rodenhiser sought to rectify the situation, but a judge ordered him to pay more than $10,000 in counsel fees.

On appeal, Rodenhiser argued that G.L.c. 231, §6F — which empowers a court to sanction litigants for bringing claims that are "wholly insubstantial, frivolous and not advanced in good faith" — did not apply to the District Court, and thus the sanctioning judge lacked the authority to award fees.

"The elimination of the two-tier system, where a litigant could remove a case as of right to the Superior Court and start over if they didn't like the result, makes the trial in District Court more important, and thus judges should be able to sanction a litigant for engaging in frivolous litigation."

— Vincent J. Pisegna, Boston

The Appellate Division agreed, applying the Appeals Court's 2009 decision in *Tilman v. Brink*, which stated that because the District Court was omitted from the statute's definition of "court," it had no power to sanction litigants under that provision.

The panel also found that a sanction would not be appropriate here even if the District Court had the authority.

"It would not defy logic to assert that Rodenhiser's actions amounted to more than a mistake," Judge Gregory C. Flynn wrote for the panel. "However, there was no evidence before the District Court as to Rodenhiser's actual intent or motive [or] to support that he was acting 'out of greed' and that his conduct was 'reprehensible.'"

The seven-page decision in *Willwerth v. Rodenhiser, et al.*, Lawyers Weekly No. 13-048-18, can be ordered at masslawyersweekly.com.

Everyone erred?

Neither the plaintiff's lawyer, Anthony Annino III of Boston, nor defense counsel, Scott S. Sinrich of Worcester, could be reached for comment prior to deadline.

However, Jeffrey S. Robbins, a litigator in Boston, said he agreed with the decision.

"As the appellate court made clear, even if the authority existed to sanction the litigant — questionable in and of itself — there was no evidence on the record to support the statements made by the lower court about the litigant's motives or conduct," Robbins said. "If there were a case to stretch, let alone alter, the existing restraints on fee-shifting, this was not it."

Civil litigator Jonathan D. Plaut described *Willwerth* as the rare case in which everyone seems to have erred: the judgment creditor, creditor's counsel, debtor's counsel, the trial judge and perhaps even the Legislature.

"The creditor should have kept better records, and creditor's counsel should have carefully checked the docket before seeking an execution," Plaut said, adding that debtor's counsel erred by not indicating in the stipulation of dismissal that the judgment had been fully satisfied and by failing to object to the issuance of an execution when notified of his right to do so.

Meanwhile, Plaut said, the trial judge erred by missing the stipulation of dismissal on the docket, failing to develop a proper factual record to support the award of sanctions, and failing to recognize the inapplicability of Chapter 231, §6F, to District Court actions.

With respect to the Legislature, Plaut agreed with the Appellate Division's suggestion that it would be an easy legislative fix to give District Court judges the fee-shifting powers under Chapter 231, §6F, that they "bafflingly" do not have now.

"[These] powers should be available to all judges in Massachusetts," the Boston lawyer said. "The more tools to sanction frivolous litigation where lawyers are involved, the better. There is little risk that litigants in small cases would be cowed from asserting their rights by this simple rule change, as the statute does not apply to pro se parties."

Vincent J. Pisegna of Boston also agreed with the Appellate Division's suggestion, which it made in a footnote, that the District Court should have the authority to sanction litigants.

"The elimination of the two-tier system, where a litigant could remove a case as of right to the Superior Court and start over if they didn't like the result, makes the trial in District Court more important, and thus judges should be able to sanction a litigant for engaging in frivolous litigation," Pisegna said. "Whether they decide to exercise such authority is another thing. But litigation [has become] more expensive, so the party forced to defend itself should have recourse to a sanctions order, if justified."

Brockton attorney Kenneth J. Goldberg noted that, in light of *Tilman*, the Appellate Division had no choice but to vacate the fee award.

"But there is a dissent in [*Tilman*] that argues that District courts do have inherent power to punish those who obstruct or degrade the administration of justice," he said. "Perhaps this is why the Appellate Division leaves that door ajar when it states that, 'even if the District Court may have had an inherent power to impose attorney's fees,' the judge should have had a hearing and inquired into the party's motives."

For lawyers who feel that they are in the midst of one of the "rare and egregious cases" in which a party has engaged in outright bad faith, Goldberg continued, they should request a hearing with witnesses or in some way create a record the court can look to in support of such an allegation.

Unwarranted execution

In 2002, Rodenhiser litigated a dispute against plaintiff Robert Willwerth in Woburn District Court, resulting in a $145,000 judgment for Rodenhiser.

Shortly afterward, the parties jointly entered into a dismissal with prejudice as to all claims.

Fourteen years later, Rodenhiser contacted his counsel from that case asserting that the judgment remained unsatisfied. With the passage of time, Rodenhiser's attorney had destroyed the case file and could not recall the stipulation of dismissal. The attorney also inadvertently missed the stipulation when reviewing the court's file.

On May 2, 2016, Rodenhiser, through his attorney, moved the District Court for issuance of an execution.

At the motion hearing, Rodenhiser's counsel appeared without opposition, though Willwerth's attorney provided an affidavit confirming that he was notified of the motion but chose not to appear.

The court reviewed the file at the hearing and apparently the stipulation was not readily noticeable to the judge, who allowed the motion.

Several months later, one of Willwerth's lawyers contacted Rodenhiser's lawyer, telling him the District Court matter had been resolved in 2002. Rodenhiser's attorney asked for proof of settlement and payment and said he would cooperate to rectify any error, but little communication followed.

Willwerth's counsel ultimately moved to recall the execution and sought attorney fees and costs. Rodenhiser then voluntarily returned the execution while opposing the fee request.

Judge Timothy H. Gailey imposed a $10,000 fee award against Rodenhiser, finding that he was "wholly and entirely responsible" for filing a "knowingly baseless" claim. The judge did not, however, sanction Rodenhiser's lawyer, who he found acted in good faith.

Rodenhiser appealed.

No authority

The Appellate Division found that the District Court lacked the authority to assess fees against Rodenhiser.

"[T]he Appeals Court's holding in *Tilman* is instructive and requires that the judgment against Rodenhiser be vacated," Judge Flynn said.

The panel also addressed whether such a sanction would be justified under the circumstances if the District Court had the requisite authority, determining that it would not be.

"Rodenhiser never appeared before the court," Flynn wrote. "Nor was the court provided any admissible evidence by way of affidavit, interrogatories, depositions, or otherwise. … [T]he record does not establish that this is the type of those rare and egregious cases for which such authority should be exercised."

Regardless of whether sanctions would have been appropriate, the panel still took the opportunity to point out in a footnote that since the institution of the one-trial system, District Court litigants have lost the ability to invoke Chapter 231, §6F, by removing a case to Superior Court.

"Whether by design or inadvertence, this leaves litigants who are faced with frivolous lawsuits in the District Court without any remedies to recover costs incurred if appropriate," Flynn wrote. "A legislative fix would return these matters to a level playing field and provide appropriate remedies that unfortunately have been lost."

Willwerth v. Rodenhiser, et al.

THE ISSUE	Should a District Court litigant who executed on a civil money judgment that had been dismissed years before by stipulation of the parties have been assessed attorneys' fees as a sanction for his conduct?
DECISION	No (Appellate Division, Northern District)
LAWYERS	Anthony Annino III and Barry J. Bisson, both of Boston (plaintiff) Scott S. Sinrich of Phillips, Silver, Talman, Aframe & Sinrich, Worcester (defense)