

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-205

VICKEY COURIER

APPELLANT

V.

MARSHA WOODRUFF

APPELLEE

Opinion Delivered NOVEMBER 2, 2011

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. CV 2009-27-2]

HONORABLE DAVID BURNETT, JUDGE

AFFIRMED; MOTION FOR SANCTIONS
DENIED

ROBIN F. WYNNE, Judge

Vickey Courier appeals from an order of the trial court granting Marsha Woodruff's motion for sanctions under Arkansas Rule of Civil Procedure 11. Appellant argues that the trial court abused its discretion by granting appellee's motion for Rule 11 sanctions while denying appellant's motion for summary judgment and that the trial court erred by allowing appellee to serve and file her second motion for Rule 11 sanctions on the same date. We affirm the order of the trial court.

Appellant filed a complaint against appellee in which she alleged that appellee, who is a licensed attorney in Arkansas, orally agreed to represent her in three separate lawsuits stemming from a traffic accident in Boone County, Arkansas. Appellant alleged that she was struck by a speeding vehicle, driven by Thomas Meyers, who then proceeded to strike vehicles driven by Glenda Parma and Jason Curry. Curry's insurance company filed suit



against appellant in Jackson County, Mississippi. Appellee assisted appellant in preparing a pro se answer to a separate complaint that had been filed against her in Boone County, Arkansas. Appellant alleges in her complaint against appellee that she went to appellee and asked her to do the following: (1) file a lawsuit against Thomas Meyers for negligence; (2) file an answer in the suit filed against appellant in Mississippi; and (3) file a lawsuit against appellant's insurance company, Farmer's Group, for failure to honor her liability insurance policy. According to appellant, appellee orally agreed to represent her as her attorney. Appellant thereafter repeatedly sent information to appellee regarding her cases.

On February 27, 2008, appellee sent appellant a letter stating that she could not take appellant's case due to a scheduled shoulder surgery. A response to the Mississippi suit was never filed on behalf of appellant. A default judgment was entered against appellant in the Mississippi case in the amount of \$23,854.78.¹

In her complaint against appellee, appellant sought damages for breach of contract and negligence. In her answer to appellant's complaint, appellee expressly denied that she was ever hired to represent appellant in any lawsuit or that she orally agreed to represent appellant. On February 17, 2009, appellee sent to appellant's counsel a letter and a copy of a motion for sanctions under Rule 11. The letter stated that the motion for sanctions would be filed unless appellant's counsel withdrew the complaint within twenty-one days of his receipt of the letter and motion. Appellant's counsel never withdrew the complaint, and appellee filed her motion

¹The default judgment against appellant was later satisfied by Thomas Meyers's insurance company in exchange for appellant's dismissal of her claim against him.



for sanctions on March 24, 2009. Appellee filed an amended motion for sanctions under Rule 11 on June 9, 2010.

Appellant filed a motion to voluntarily nonsuit her claim against appellee on August 11, 2010. On September 13, 2010, appellant filed a motion for summary judgment on appellee's motion for sanctions. In support of the motion for summary judgment, counsel for appellant submitted an affidavit by appellant. The acknowledgment attached to the affidavit states that it was signed on August 27, 2009. Curiously, however, the affidavit references deposition testimony given by appellant in July 2010. On December 20, 2010, the trial court entered an order denying appellant's motion for summary judgment. The trial court entered an order granting appellant's motion to dismiss her claim against appellee without prejudice.

The hearing on appellee's motion for Rule 11 sanctions was held on December 16, 2010. The hearing was apparently not transcribed by agreement of the parties. Rule 6(d) of the Arkansas Rules of Appellate Procedure—Civil (2011) states that in such a situation, the appellant may prepare a statement of the evidence or proceedings from the best means available, including his recollection. Appellant elected not to do so. When there is no effort made to comply with Rule 6(d), it is presumed that the matters presented in the hearing support the trial court's findings. *Rush v. Wallace*, 23 Ark. App. 61, 742 S.W.2d 952 (1988). On January 27, 2011, the trial court entered an order granting appellee's motion for sanctions and entering judgment against counsel for appellant in the amount of \$1500. This appeal followed.



A determination that a Rule 11 violation occurred is reviewed for abuse of discretion. *Crockett & Brown, P.A. v. Wilson*, 321 Ark. 150, 901 S.W.2d 826 (1995). Appellant's first point on appeal is that the trial court abused its discretion by granting appellee's motion for Rule 11 sanctions. Intertwined with this argument is appellant's argument that the trial court erred by failing to grant her motion for summary judgment. However, we cannot consider the order denying appellant's motion for summary judgment on appeal. Arkansas Rule of Appellate Procedure—Civil 3(e)(ii) (2011) requires that a notice of appeal designate the judgment, decree, order or part thereof appealed from. An order not mentioned in the notice of appeal is not properly before an appellate court. *Lindsey v. Green*, 2010 Ark. 118, 369 S.W.3d 1. Appellant's notice of appeal only mentions the order granting appellee's motion for sanctions. The order denying appellant's motion for summary judgment is not listed in the notice of appeal and is not properly before this court on appeal.

The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and that it complies with the requirements of Rule of Civil Procedure 5(c)(2) regarding redaction of confidential information from case records submitted to the court. Ark. R. Civ. P. 11 (2011). The applicable question before this court is whether the trial court abused its discretion in determining that counsel for



appellant violated this rule. Rule 11 requires an attorney to perform reasonable inquiry to determine whether a pleading is well-grounded in fact and law. In the instant case, it does not appear that counsel for appellant undertook any effort to determine whether the complaint was well-grounded in fact. He never contacted appellee prior to filing the complaint, nor does it appear that he made any effort, other than talking to his client, to determine whether appellee had agreed to represent appellant, even though the suit in which the default judgment against appellant was entered was filed in a jurisdiction in which appellee was apparently not licensed to practice law. Given these circumstances, we hold that the trial court did not abuse its discretion by finding that the filing of appellant's complaint violated Rule 11.

Appellant's second point on appeal is that the trial court abused its discretion by allowing appellee to serve and file her second motion for Rule 11 sanctions on the same date in contradiction to Arkansas Rule of Civil Procedure 11(b). A motion for sanctions under Rule 11 shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision 11(a). Ark. R. Civ. P. 11(b) (2011). It shall be served as provided in Arkansas Rule of Civil Procedure 5 but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. *Id.* The reporter's notes to Rule 11 indicate that subdivision 11(b) is intended to provide a "safe harbor" against motions under Rule 11 by giving a party against whom such a motion would be filed an opportunity to



either withdraw its position or admit that it does not have evidence to support a specific allegation.

Appellant does not argue that appellee properly complied with Rule 11(b) when she filed her original motion for Rule 11 sanctions. The document that appellant classifies as a second motion for Rule 11 sanctions is, in fact, an amendment to appellee’s original Rule 11 motion. Counsel for appellant had previously been given a “safe harbor” period in which to determine whether to withdraw the complaint against appellee and chose not to do so. We hold that the trial court did not err by not requiring counsel for appellant to be given a second safe harbor period with regard to the same complaint.

Appellee has also filed a motion with this court requesting additional sanctions against appellant under Arkansas Rule of Appellate Procedure–Civil 11 for filing an appeal in this matter. That motion is hereby denied.

Affirmed; motion for sanctions denied.

ROBBINS and GLOVER, JJ., agree.

Harry McDermott, for appellant.

Ronald G. Woodruff, for appellee.