

SUPPLEMENTAL OPINION ON DENIAL OF REHEARING
JANUARY 30, 1989

763 S.W.2d 656

1. TRIAL — EXERCISE OF DISCRETION BY JUDGE — APPELLATE COURT UNWILLING TO CONCLUDE HE DID NOT EXERCISE DISCRETION. — Where the trial judge remarked that the critical factor in denying appellant's ARCP Rule 11 motion involved the appellees' success in municipal court, but the trial court never stated that the municipal court judgment was the sole reason for its ruling; and where the trial court, when ruling on the parties' motions, had the municipal court record before him as well as the extensive briefs and arguments of the parties, the appellate court was unwilling to conclude that he failed to consider or ignored these matters when he dismissed the cause and denied ARCP Rule 11 sanctions, and the record was sufficient to uphold that decision.
2. TRIAL — COURT NOT REQUIRED TO GIVE REASONS FOR ITS DECISION — PARTY MAY REQUEST COURT GIVE REASONS. — The trial court was not required to give detailed reasons for its action; however, under ARCP Rule 52, appellant certainly could have requested the trial court to set out facts and conclusions of law that constituted the grounds for its decision.
3. APPEAL & ERROR — TRIAL COURT PROVIDED NO DETAILED REASONING FOR ITS DECISION — STANDARD OF REVIEW. — Where the trial court did not provide any detailed reasoning for its decision, the appellate court on appeal was relegated to a review of the entire record to determine if the record supported the trial court's decision.

TOM GLAZE, Justice. In his petition for rehearing, appellant argues this court's opinion seemed to permit the trial court to abdicate exercising its discretion when refusing to impose Rule 11 sanctions. He suggests the only reason underlying the trial court's finding that the Rule 11 motion was without merit was that the appellees were the prevailing parties in the municipal court proceeding. In other words, appellant claims that since the trial court accorded dispositive weight to the municipal court judgment, the court thereby failed to exercise its own discretion when ruling on the motion.

[1] Although the trial court remarked that the critical factor in denying appellant's Rule 11 motion involved the appellees' success in municipal court, the court never stated—as

appellant suggests—that the municipal court judgment was the sole reason for its ruling. As we clearly related in our opinion, the trial judge, when ruling on the parties' motions, had the municipal court record before him as well as the extensive briefs and arguments of the parties. We are unwilling to conclude that he failed to consider or ignored these matters when he dismissed this cause and denied Rule 11 sanctions.

Appellant seems to premise his argument on the fact that the evidence before the trial court showed that the appellees' trespass action against the appellant had been frivolously filed. We cannot agree. Appellees submitted evidence, along with their motion to dismiss, which countered appellant's motion and argument that the appellees' claim had no factual basis. Clearly, this evidence supports, in part, why the appellees initially brought their action against the appellant and offered a basis for appellees having prevailed in the municipal court proceeding. With this record before him, the trial judge was well within his discretion to rule that the municipal judgment favoring appellees was significant and was reason enough to show appellees' action was not frivolous nor subject to Rule 11 sanctions.

[2, 3] Apparently, the appellant is troubled because the trial court did not specifically note such other evidence or findings when dismissing appellees' cause and denying appellant's request for Rule 11 sanctions. As noted earlier, the court only referred to the municipal court judgment that was awarded appellees. Of course, the trial court was not required to give detailed reasons for its action. Even so, under ARCP Rule 52, appellant certainly could have requested the trial court to set out facts and conclusions of law which constituted the grounds for its decision. He failed to do so. Thus, on appeal, we are relegated to a review of the entire record to determine if the record supports the trial court's decision. We have no doubts that it does. Accordingly, we conclude the trial court properly exercised its discretion in ruling on appellant's Rule 11 motion, and from our review of the record, we are unable to say it abused its discretion in denying his motion.

For the foregoing reasons, we deny appellant's petition for rehearing.

HOLT, C.J., DUDLEY and NEWBERN, JJ., would grant.

DAVID NEWBERN, Justice, dissenting. The court's original opinion is quite correct in holding that the municipal and circuit courts lacked jurisdiction of the trespass claim. We were also correct in modifying dismissal of the counter-claim so that it is without prejudice. We erred by not requiring the trial court at least to hold a hearing to determine whether sanctions pursuant to Ark. R. Civ. P. 11 would be appropriate.

The appellant, Dodd Miles, argued that the appellees, Byron Southern, Fred Hunt, and Wayland Roberts, had at least constructive notice of the subservience of their land to an easement in favor of the land owned by Miles. It is also contended that all the evidence of record indicates that Southern, Hunt, and Roberts had actual knowledge of the existence of the easement, and thus their action to recover their costs for damaging and moving Miles's sewer line was totally frivolous. These allegations do not, of course, necessarily mean that Miles is entitled to Rule 11 sanctions, however, the allegations require serious consideration.

In our opinion we noted that the trial court, in denying Rule 11 relief, "mentioned that the appellees [Southern, Hunt, and Roberts] . . . prevailed on the merits of their trespass claim in municipal court." We also noted that the trial court had before it all the pleadings, municipal court records, briefs and arguments filed in the circuit court. We did not point out that the *only* reason the trial court gave for denial of sanctions was that Southern, Hunt, and Roberts prevailed in the municipal court. That was an improper reason to give. The rule does not absolve a party of the possibility of sanctions just because he prevailed at an earlier stage of the litigation. It is easy to conceive of instances where the prevailing party might file a pleading, motion, or other paper which could violate the rule and thus require sanctions.

The majority opinion upon denial of rehearing states that it was proper for the trial court to give as its reasons for denial of Rule 11 sanctions the fact that the plaintiffs prevailed in the municipal court. What if the plaintiffs' victory there was the result of a pleading or other document filed in direct violation of Rule 11? Surely the majority would not agree that the fact that the plaintiffs won would have anything to do with the issue of whether the sanctions should be imposed. Miles's contention here

is that the complaint filed against him in the municipal court was known by the plaintiffs to be without basis. If it turns out that it was without basis and the plaintiffs knew or should have known it was without basis when they filed it, is the fact that they prevailed on such a complaint relevant? To ask the question is to answer it. The fact that one party or the other prevailed at an earlier stage of the litigation has absolutely nothing to do with whether Rule 11 has been violated.

I disagree with the suggestion of the court's opinion on denial of rehearing that the trial judge stated that the plaintiffs' victory in the municipal court was only a "critical factor" in deciding whether to award Rule 11 sanctions. That was the language the judge used in his letter responding to Miles's request for reconsideration of the dismissal of his counterclaim for malicious prosecution. In a separate paragraph in that letter, the court stated:

In regard to the Rule 11 sanctions motion filed by the defendant, this Court finds it is, once again, without merit. A lower court has found in favor of the plaintiff and I am not prepared to invoke the stringent penalties of Rule 11 on a prevailing party.

The final order denying reconsideration states only the following with respect to denial of Rule 11 sanctions:

In regard to Defendant's Motion for sanctions pursuant to Rule 11, such Motion is again without merit. The Court will not invoke the penalties of Rule 11 on a prevailing party, and since Plaintiffs won in the lower court, such Motion is denied.

Unlike the majority, I take the judge at his word. The record demonstrates nothing other than that the judge had only one reason for his action, and that reason was incorrect.

Miles's brief concedes that a trial court has some discretion in deciding to impose or not impose sanctions under Rule 11. The argument made, however, is that we have no evidence that the trial court exercised its discretion in this matter. There is nothing of record to show that the judge considered anything, in making the decision not to impose sanctions, other than the fact that Southern, Hunt, and Roberts had prevailed in the municipal court. If the trial court does have discretion to impose or decline to

impose Rule 11 sanctions, we have no evidence that the trial court exercised whatever discretion it may have had in the matter, and we should have remanded the case for that purpose. Unlike Miles, I cannot concede that the trial court has the kind of discretion of which I think Miles and our opinion speak. I will address that question below, after making the point that even if the trial court has that sort of discretion we should have remanded the case so that it could be exercised by the trial court.

In *Acklin v. State*, 270 Ark. 879, 606 S.W.2d 594 (1980), the trial judge decided, as was within his discretion to do, that sentences of a convict should be served consecutively rather than concurrently. In the course of making that decision, the judge spoke in open court about how the defendant had failed to present a defense, and thus had put the county to unnecessary expense of trying him. He then stated he was not necessarily making the sentences consecutive for the reason just expressed and that he normally ran jury sentences consecutively anyway as he thought that was what jurors intended. In the opinion of this court reversing and remanding the case for resentencing, Justice George Rose Smith wrote:

The Code vests the choice between concurring and consecutive sentences in the judge, not in the jury. We commend the trial judge for his outspoken candor and would certainly condemn a resort to silence as a deliberate means of concealing an improper practice. But the trouble is, nothing in the colloquy indicates that the trial judge really exercised his discretion. Rather, he seems to have imposed consecutive sentences either because the defendant asked for a jury trial without any defense or because it was the court's rule to direct that jury sentences run consecutively. We have often said that a court proceeding should not merely be fair; it should also appear to be fair.

We should at least have sent this case back to the trial judge so that he could give consideration to whether Rule 11 sanctions were warranted. Otherwise, this case takes on the appearance that we have exercised the discretion we seem to say the trial judge had. That would be unfair because, as our opinion pointed out, the trial judge is in a much better position than we to exercise whatever discretion there may be in making the decision.

All I need say about *O'Connell v. Champion Intern. Corp.*, 812 F.2d 393 (8th Cir. 1987), upon which our opinion approving denial of Rule 11 sanctions was based, is that it clearly states that the trial court heard the arguments that the plaintiff had known of two defenses to his claim, one based on the statute of limitations and the other on a release from liability he apparently had executed, but that the trial court had rejected the contentions. There the trial court did not give an incorrect reason for his decision which, as in this case, indicates he thought he did not have any discretion to exercise in the matter.

In addition, I think it is error for this court to ascribe a tone to the opinion in the *O'Connell* case which seems to me to foster the attitude that a trial court could find a violation of Rule 11 and yet, in its discretion, refuse to impose sanctions. Prior to its amendment in 1986, that may have been the case, but the rule now states that upon making the finding, for example, that a party has filed a pleading not "well grounded in fact and . . . warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, . . . the court . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction. . . . [emphasis supplied]." The discretion to be exercised rests wholly in the area of fact finding, for the court has no power to refuse to impose sanctions where violation of the rule is found to have occurred. I think it is a mistake to hold that the trial court has discretion in this respect. I think Judge Arnold's opinion in the *O'Connell* case should be read as pointing out that the trial court rejected, as matters of fact, that the plaintiff knew there were valid defenses to his claim.

We should grant rehearing and point out that we give deference to a trial court's finding of facts in the process of considering Rule 11 sanctions just as we do in other cases where trial judges are required to find facts and they have the witnesses and the parties and the papers before them. We should not, in this first case interpreting our Rule 11, make the mistake of saying or implying that the trial court may or may not impose Rule 11 sanctions "in his discretion" thus leaving the further implication that, even if a violation is found the trial court need not do anything about it.

I interpret our Rule 11 as leaving no discretion in the trial court to decline to impose sanctions once a violation of the rule has

been found to have occurred. However, rehearing should be granted on this aspect of the case even if the majority of the court concludes that the trial court does have such discretion because there is no evidence here that it was properly exercised or exercised at all. I would grant rehearing on the Rule 11 aspect of the case. Therefore, I respectfully dissent from the denial of rehearing.

HOLT, C.J., and DUDLEY, J., join this opinion.
