

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

JR. BROCK'S AUTO WORKS II, INC.,	:	APPEAL NOS. C-060464
d.b.a. AUTO WORKS,	:	C-060467
	:	C-061070
AUTO HOUSE LTD.,	:	TRIAL NO. A-0308567
	:	
Plaintiffs,	:	<i>JUDGMENT ENTRY.</i>
	:	
and	:	
	:	
DONNA BROCK,	:	
	:	
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	
EWELL BROCK, JR.,	:	
	:	
JOSEPH B. MANSOUR,	:	
	:	
MANSOUR CONSULTING CPA FIRM,	:	
LLC.,	:	
	:	
and	:	
	:	
LAURA BROCK, ¹	:	
	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.²

¹ Laura Brock's name also appears as Lora Brock in portions of the record.

² See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

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Appellants Ewell Brock, Jr., Joseph Mansour, Mansour Consulting CPA Firm, LLC. (“Mansour Consulting”), and Laura Brock appeal the trial court’s judgment that dismissed their counterclaims, ordered sanctions against Mansour, denied their motion for sanctions and costs against Donna Brock, and denied Ewell and Laura Brock’s motion to compel. We conclude that the appellants’ assignments of error do not have merit, and we therefore affirm the judgment of the trial court.

Donna Brock and Ewell Brock, Jr., are former spouses. Pursuant to their divorce decree, Donna and Ewell operated Jr. Brock’s Auto Works II, Inc. (“Auto Works”) jointly.³ After Donna and Ewell divorced, articles of incorporation and an operating agreement were filed for Auto House Ltd. (“Auto House”). According to the operating agreement, Donna and Ewell were each appointed managers and were given equal voting rights. Ewell was named as the president of Auto House, and Donna was the vice president and secretary.

In 2003, Donna sought to have Auto Works and Auto House dissolved and to have her interests bought out. Ewell responded that he had retained Mansour to act as his business advisor and to negotiate a buy-out agreement. In November 2003, Donna filed the within action on behalf of herself, Auto Works, and Auto House. In the complaint, she sought appraisals and accountings, and the dissolution of Auto Works and Auto House. Additionally, she asserted various claims against Ewell, Mansour, Mansour Consulting, and Laura Brock, who is Ewell’s current spouse.

On November 28, 2003, the trial court appointed a receiver for Auto Works and Auto House. According to the court’s order, the receiver was to operate the

³ Because Ewell, Donna, and Laura Brock have the same surname, we refer to them by their first names to avoid confusion.

businesses and to conduct an appraisal and an accounting for purposes of dissolving the businesses.

As the case progressed, numerous motions were filed on behalf of Ewell, Laura, and Mansour Consulting, who were represented by counsel, and by Mansour, who was acting pro se. A magistrate twice found Mansour in violation of Civ.R. 11 for ignoring the magistrate's orders that quashed subpoenas, and the magistrate ordered him to pay attorney fees. The magistrate's decisions regarding the fees were adopted by the trial court over the objections of Mansour.

Upon the motions of Ewell and Laura, Mansour Consulting, and Mansour, the magistrate granted summary judgment against Donna on all her claims except for those relating to the dissolution of the businesses. In the course of its decisions, the magistrate determined that Donna was not permitted to bring claims on behalf of Auto Works and Auto House. In a decision dated February 14, 2006, the magistrate held that, except for the two claims relating to the dissolution of the businesses, the case was dismissed. The magistrate also stated in the decision that, upon the filing of the receiver's final report on March 13, 2006, the entire case would be dismissed. The magistrate's February 14 decision was adopted by the trial court over the objections of the appellants.

On April 6, 2006, the magistrate issued another decision that sua sponte dismissed the counterclaims that had been filed by the appellants. On April 28, 2006, the trial court entered a judgment adopting the magistrate's decision. The appellants have appealed this judgment under the numbers C-060464 and C-060467.

Upon motion of the appellants, this court remanded the case to the trial court for resolution of outstanding motions for sanctions against Donna, Civ.R. 60(B) motions, and Ewell's motion to compel the return of business records. The magistrate denied the motions for sanctions against Donna. And in its entry dated November 20, 2006, the trial court adopted the magistrate's decision and denied any remaining motions. The appellants have appealed this decision under the number C-061070. We have sua sponte consolidated the appeals under the number C-060464.

In the first assignment of error, the appellants assert that the trial court erred when it adopted the magistrate's decision that sua sponte dismissed their counterclaims. A trial court may sua sponte dismiss a complaint if it "is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint."⁴

We conclude that the magistrate properly dismissed as moot Mansour's first two counterclaims that sought indemnification from Auto Works. All the claims against Mansour had been dismissed, so there were no claims for which Auto Works could indemnify him. And after reviewing the record, we conclude that the trial court did not err when it dismissed Mansour's third counterclaim and Ewell's three counterclaims as frivolous.⁵ The first assignment of error is without merit.

In the second assignment of error, Mansour asserts that the trial court erred when it adopted the magistrate's decisions to sanction him in the amount of \$800. Mansour had filed a motion to disqualify attorney Kevin Swick from representing Donna. In pursuing his motion, he subpoenaed Mark Fitch, who had represented Donna in her initial attempt to buy out Ewell's interests in the businesses. After a hearing, the magistrate quashed the subpoena. Mansour then attempted to

⁴ *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 316, 725 N.E.2d 663.

⁵ See R.C. 2323.51.

subpoena Fitch, Swick, and Warren Ritchie, who was a law partner of Swick. Swick and Ritchie moved to quash the subpoenas and for an order that Mansour pay attorney fees. The magistrate granted the motion and ordered Mansour to pay to Swick and Ritchie attorney fees of \$450. Fitch also filed a motion to quash the subpoena and sought attorney fees. The magistrate granted the motion and ordered Mansour to pay to Fitch \$350 in attorney fees.

We review the imposition of sanctions under an abuse-of-discretion standard.⁶ Mansour argues that the magistrate erred in imposing sanctions in the absence of an evidentiary hearing. But the magistrate's decisions regarding the sanctions both indicate that the decisions were made after hearing the parties' arguments. Based on the record before us, we conclude that the magistrate did not abuse his discretion in ordering Mansour to pay the fees. And the trial court did not err in adopting the magistrate's decisions. The second assignment of error is overruled.

The third assignment of error is that the trial court erred when it did not hold an evidentiary hearing on the appellants' motion for sanctions against Donna. The appellants assert that Donna's lawsuit was frivolous, and that she filed it to harass them. They argue that the trial court should have awarded attorney fees on this basis, and that the trial court should have held an evidentiary hearing to determine the amount of attorney fees to be awarded.

We conclude that the trial court did not abuse its discretion in refusing to order attorney fees. Appellants are incorrect when they state that Donna was unsuccessful on all her claims. The court did appoint a receiver to conduct an

⁶ *State ex rel. Fant v. Sykes* (1987), 29 Ohio St.3d 65, 505 N.E.2d 966.

appraisal and an accounting of the businesses, and the businesses were dissolved. This result was precisely what Donna had sought in the second and third claims of her second amended complaint. Because the trial court did not conclude that Donna's complaint was frivolous, there was no need for it to hold an evidentiary hearing on the amount of attorney fees that she should pay to the appellants. The third assignment of error is overruled.

In the fourth assignment of error, the appellants assert that that the trial court should have ordered Donna to pay costs because she was the losing party. Civ.R. 54(D) provides that “[e]xcept when express provision therefore is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs.” The Ohio Supreme Court has held that trial courts have discretion “to order prevailing parties to bear all or part of their own costs.”⁷ The appellants were the prevailing parties only to the extent that the trial court dismissed some of Donna's claims against them. As we have discussed, Donna was successful in obtaining the dissolution of the businesses. And she did prevail with respect to all the appellants' counterclaims. Given these results, the trial court did not abuse its discretion when it required the appellants to bear their own costs to the extent that they were prevailing parties. The fourth assignment of error is overruled.

In the final assignment of error, Ewell and Laura assert that the trial court erred when it denied their motion to compel Donna to return business records. The motion was not made as part of the discovery process, as the claims between the parties had been resolved by the trial court. It appears that Ewell and Laura were seeking a ruling on who owned the business records. Because that issue was not

⁷ *State ex rel. Frailey v. Wolfe*, 92 Ohio St.3d 320, 321, 2001-Ohio-197, 750 N.E.2d 164.

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raised as a claim by any party, the issue was not properly before the trial court. The trial court did not err when it denied the motion. The fifth assignment of error is without merit.

Therefore, we affirm the judgment of the trial court.

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.

PAINTER, P.J., SUNDERMANN and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on October 3, 2007
per order of the Court _____.
Presiding Judge