

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP1740

Cir. Ct. No. 2005CV5743

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

LEGAL ACTION OF WISCONSIN, INC.,

PLAINTIFF-RESPONDENT,

V.

SANDEE STADLER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MARTIN J. DONALD, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Snyder, JJ.

¶1 WEDEMEYER, P.J. Sandee Stadler appeals *pro se* from an order denying her motion for frivolous sanctions, following the dismissal of Legal

Action of Wisconsin, Inc.'s lawsuit, which alleged that Stadler had misappropriated trade secrets. Stadler claims the trial court erred in denying her motion seeking frivolous sanctions. Because the trial court's determination that Legal Action's lawsuit was not frivolous finds sufficient support in the record, we affirm.

BACKGROUND

¶2 This action arises from a failed employment relationship. Stadler worked as a paralegal for Legal Action from July 2001 until October 2003 when she was terminated. After termination, Stadler filed a complaint with the EEOC/ERD alleging discrimination along with a union grievance. During the ERD proceeding, Stadler attempted to introduce documents, which contained confidential client information, which she had taken from Legal Action when she was terminated.

¶3 At this point, Legal Action filed suit against Stadler alleging misappropriation of trade secrets. Legal Action also requested and was granted a temporary restraining order ordering Stadler to return any and all records, papers, documents, writings and computer records which contained the identities of any of Legal Action's clients to Legal Action. Stadler returned 268 documents to Legal Action.¹ In response to Legal Action's suit, Stadler filed a counterclaim, alleging that the action was frivolous and sought sanctions on that basis.

¹ There was a dispute as to how Stadler came to be in possession of these confidential documents. Stadler claims that the managing attorney at Legal Action handed her a box upon termination that contained such records. Legal Action disputes such contention. This dispute is not pertinent to our disposition of this matter, and therefore need not be addressed. See *Gross v. Hoffman*, 227 Wis. 296, 277 N.W. 663 (1938).

¶4 The trial court conducted a hearing in the matter on September 19, 2005 and October 31, 2005. On March 17, 2006, the trial court dismissed the suit, ruling:

Looking at the facts of this case, it is clear that LAW has an adequate remedy at law. Administrative Law Judge DeLaO has apparently previously worked to redact names on LAW documents during the ERD hearings. An injunction is not necessary to protect LAW client confidentiality if no client names are legible on the documents when they are used in the ERD or union arbitration proceedings.

The trial court's March 17th order did not address Stadler's counterclaim. Thus, on March 28, 2006, Stadler sent a letter to the court inquiring about the status of her motion for sanctions. The trial court issued a written order on April 7, 2006, denying Stadler's motion for frivolous sanctions and dismissing her counterclaim.

The trial court reasoned:

Stadler believes that sanctions are appropriate as the lawyers for LAW made insufficient inquiry into the facts and law of the case before filing what she believes is a frivolous action.

The comments to § 802.05 suggest that in deciding whether to impose sanctions, trial courts may consider "(1) [w]hether the alleged frivolous conduct was part of a pattern of activity or an isolated event; (2) [w]hether the conduct infected the entire pleading or was an isolated claim or defense; and (3) [w]hether the attorney or party has engaged in similar conduct in other litigation."

None of the above statements apply to this case. The January 23, 2006 Affidavit of Roberta Rieck [from Legal Action] establishes that at the June 27, 2005 Equal Rights Division hearing Stadler attempted to use un-redacted client-identifying information. LAW was forced to act quickly to protect client information from being publicly disclosed. Had that information been made public, it may have subjected LAW to liability for breach of attorney-client confidentiality. Because of Stadler's actions, the possible consequences to LAW were severe. Under the

circumstances, the Court cannot find that LAW's filing of this lawsuit was frivolous.

Stadler now appeals from this order.

DISCUSSION

¶5 Stadler complains that the trial court did not find Legal Action's lawsuit to be frivolous. She sees Legal Action's lawsuit against her purely as an attempt to harass her for filing a discrimination complaint with ERD. The record does not support Stadler's contentions.

¶6 Our supreme court recently revised the statutes applying to frivolous claims. The new statute provides in pertinent part:

802.05 Signing of pleadings, motions, and other papers; representations to court; sanctions. (1) SIGNATURE. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, and state bar number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(2) REPRESENTATIONS TO COURT. By presenting to the court, whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following:

(a) The paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(b) The claims, defenses, and other legal contentions stated in the paper are warranted by existing law or by a

nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(c) The allegations and other factual contentions stated in the paper have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(d) The denials of factual contentions stated in the paper are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

WIS. STAT. § 802.05 (2005-06).²

¶7 A claim is frivolous when the claim lacks “any reasonable basis in law or equity.” *Jandrt v. Jerome Foods, Inc.*, 227 Wis. 2d 531, 563, 597 N.W.2d 744 (1999). Inquiries about frivolousness involve a mixed question of law and fact. *Stern v. Thompson & Coates, Ltd.*, 185 Wis. 2d 220, 236, 517 N.W.2d 658 (1994). The trial court’s finding of facts will not be reversed by an appellate court unless the findings of fact are clearly erroneous. WIS. STAT. § 805.17(2). The ultimate conclusion of whether the trial court’s fact determinations support the legal conclusion of frivolousness is, however, a question of law, which this court review independently. *Stern*, 185 Wis. 2d at 236.

¶8 In determining whether an action is frivolous, a court should keep in mind that a significant purpose of the frivolous action statute is to help maintain the integrity of the judicial system and the legal profession. *Sommer*, 99 Wis. 2d at 799. “[C]ourts and litigants should not be subjected to actions without substance.” *Jandrt*, 227 Wis. 2d at 572. A determination of frivolousness,

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

however, is “an especially delicate area”; a court must be cautious in declaring an action frivolous, lest it stifle the “ingenuity, foresightedness and competency of the bar” *Radlein v. Industrial Fire & Cas. Ins. Co.*, 117 Wis. 2d 605, 613, 345 N.W.2d 874 (1984). “Because it is only when *no* reasonable basis exists for a claim or defense that frivolousness exists, the statute resolves doubts in favor of the litigant or attorney.” *In re Estate of Bilsie*, 100 Wis. 2d 342, 350, 302 N.W.2d 508 (Ct. App. 1981) (emphasis added). In reviewing a WIS. STAT. § 802.05 decision, our review is deferential. *Riley v. Isaacson*, 156 Wis. 2d 249, 256, 456 N.W.2d 619 (Ct. App. 1990).

¶9 Here, the trial court’s factual findings are not clearly erroneous and its application of the facts to the pertinent law led to a reasonable determination that Legal Action’s lawsuit was not frivolous. The trial court found that it was Stadler’s actions with respect to the confidential documents, which forced Legal Action to file this lawsuit. There was no evidence that Legal Action filed the lawsuit to harass Stadler or for any other improper purpose. It is also clear from the record that, based on the case law at the time this lawsuit was filed, Legal Action had a reasonable basis for filing this suit and had factual support.

¶10 Based on the record, Legal Action’s lawsuit was filed in response to Stadler’s attempt to disclose confidential information, which she was not legally entitled to possess. Such disclosure would have had negative consequences for Legal Action and its clients. Thus, the record supports the trial court’s inference that Legal Action’s lawsuit was filed in order to protect itself and its clients, not to harass Stadler. Based on the foregoing, we agree with the trial court’s legal conclusion that Legal Action’s lawsuit was not frivolous. Accordingly, we affirm the order.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

