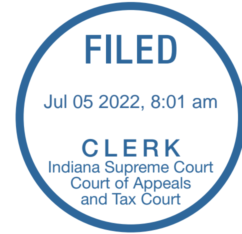

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Contempt of Christopher C. Myers,

Appellant-Contemnor,

Adam Williams and Debbie Williams,

Plaintiffs-Co-Contemnors,

v.

Shafer Pick A Part, LLC, and Paul Shafer,

Defendants-Appellees.

July 5, 2022

Court of Appeals Case No. 22A-CT-142

Appeal from the Allen Superior Court

The Honorable Jennifer L. DeGroote, Judge

Trial Court Cause No. 02D03-1907-CT-394

Shepard, Senior Judge.

Statement of the Case

[1] After the lawyer-client relationship had deteriorated, attorney Christopher C. Myers and his clients Adam and Debbie Williams did not appear for scheduled and duly noticed depositions. The defendants in the litigation, Shafer Pick A Part, LLC, and Paul Shafer, moved for Trial Rule 37(D) sanctions, which the trial court awarded and later adjusted.

[2] Attorney Myers now appeals the court's sanctions against him, contending that his failure to attend was substantially justified. The Shafer defendants argue that they are entitled to appellate attorney fees under Trial Rule 37(A)(4). We affirm the trial court's sanctions, but decline to remand or recommend the imposition of appellate penalties.

Issues

[3] Myers asks us: whether the court abused its discretion by imposing sanctions against him for failing to attend depositions scheduled for July 16, 2021.

[4] Shafer Pick A Part, LLC and Paul Shafer contend the court did not abuse its discretion and ask us: whether the matter should be remanded for the calculation of appellate costs and attorney fees under Indiana Trial Rule 37(A)(4).

Facts and Procedural History

[5] In 2019, Myers was hired to represent clients Adam and Debbie Williams to pursue their claims against the Shafer defendants, alleging violations of the Fair

Labor Standards Act (FLSA), 29 U.S.C. §201. In late 2020, the parties engaged in court-ordered mediation, after which an oral settlement was reached, but ultimately fell apart. The parties then proceeded to contentious litigation.

[6] The Shafer defendants filed a motion to dismiss which was treated as a motion for summary judgment. The court set July 16, 2021, as the hearing date for the motion and set July 1st as the deadline for the Shafer defendants to take the Williams' depositions. With coordination and agreement from both counsel, the depositions were scheduled for June 24th. Myers and counsel for the Shafer defendants appeared, but the Williamses did not. A record was made of their failure to appear and counsel for the Shafer defendants then moved for sanctions.

[7] Counsel for the Shafer defendants then attempted via email to reschedule the depositions for July 15th or 16th. Overnight, or in the early morning hours, an electronic notification was transmitted from the court, indicating that the July 16th hearing date had been vacated and reset on August 10th. During business hours that same morning, counsel for the Shafer defendants received an email from Myers' assistant that Myers was "fully booked" on the proposed deposition dates. Appellant's App. Vol. 2, p. 45. One of these dates, of course, had been set by the court for a hearing—and postponed just hours before.

[8] After receiving notice of the depositions, Myers filed a motion to quash them, which the court denied by written order, saying,

> Come now Plaintiffs, by counsel, and file a Motion to Quash Deposition Notices that were served for depositions to take place on July 16, 2021, in the afternoon. The Court would note that this was the timeframe that was originally scheduled for hearings in this case, but that the Court had granted an extension of time and reset the hearing in an Order dated July 6, 2021. The Court would also note an enlargement of time has already been granted to the Defendants to file a reply brief to the pending Motion for Summary Judgment which was caused by the Plaintiffs' failure to appear for a previously scheduled deposition. Plaintiffs appear to have exhausted any courtesies regarding their potential conflicts with the scheduling of their depositions, especially in light of Defendants['] current due date of July 30, 2021, to file any reply and/or supplemental designation in support of their Motion to Dismiss treated as a Motion for Summary Judgment.

Id. at 47-48. Counsel for the Shafer defendants appeared for the depositions on July 16th, but attorney Myers and the Williams did not. The Shafer defendants filed a second motion for sanctions.

[9] After some missteps, Myers properly withdrew from representation; however, the matter of sanctions remained pending. The court held a sanctions hearing at which neither Myers nor his clients appeared.

[10] By written order, the court granted summary judgment in favor of the Shafer defendants and found Myers' and the Williams' failure to attend both depositions contemptuous and sanctionable in the amount of $7,726.88. After Myers sought relief from joint and several liability under the judgment, in particular because he was present for the failed June 24th depositions, the court modified the amount for which he was jointly and severally liable to $3,332.80,

with the Williamses remaining liable for the entire amount for their failure to appear on two occasions. Continuing to dispute the sanction imposed against him, Myers appeals.[1]

Discussion and Decision

I. Rule 37(D) Sanctions

[11] Myers acknowledges his failure to appear but says that his failure to appear for the July 16th depositions was substantially justified because he sent a message to opposing counsel that he was "fully booked." Appellant's Br. p. 9.

[12] In pertinent part, Rule 37(D) provides for the payment of reasonable expenses and attorney's fees as a sanction where a party fails to attend their deposition, "unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." Trial courts are given broad discretion in ruling on discovery matters, and we will interfere with those rulings only when an abuse of discretion is present. *Hatfield v. Edward J. DeBartolo Corp.*, 676 N.E.2d 395 (Ind. Ct. App. 1997), *trans. denied*. And we will find an abuse of discretion only where the result reached by the court is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable and actual deductions flowing therefrom. *Id.*

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[1] The Williamses are not participating in this appeal. However, "[a] party of record in the trial court or Administrative Agency shall be a party on appeal." Ind. Appellate Rule 17.

[13] Here, the litigation had been ongoing for some time, and it is evident that the lawyer-client relationship had broken down between Myers and the Williamses. Yet, a hearing was set for nearly the same time and on the very same date as the proposed July 16th depositions. Myers offered in response to the scheduling request only that he was "fully booked" and could not attend. Next, Myers moved to quash the depositions, but was unsuccessful. Nevertheless, aware of the deposition date, and aware that his motion to quash had been denied, Myers failed to appear. And compounding things, Myers failed to appear for the sanctions hearing. Without more than Myers' message through an assistant that he was fully booked, at a date the court observed had been reserved for a hearing, and without any further explanation at the sanctions hearing due to his absence, the court was well within its discretion to impose sanctions for Myers' part in the discovery violations. In sum, Myers had not satisfied a showing that his failure to attend was substantially justified or that other circumstances made an award of expenses unjust.

[14] The court did provide Myers relief by correcting the sanctions imposed related to the failed June 24th depositions for which he was present. Rule 37(A) provides that the court "may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner" where the motion for sanctions is granted in part and denied in part. The court adjusted the sanction to reflect a more accurate apportionment between Myers and his clients for their respective shortcomings. We find no abuse of discretion here.

II. Appellate Fee Award

[15] The Shafer defendants argue that the matter should be remanded for an award of appellate costs and fees under Rule 37(A)(4). In *Georgetown Steel Corp. v. Chafee*, 519 N.E.2d 574, 577 (Ind. Ct. App. 1988), a case relied on by the Shafer defendants for this argument, a panel of this Court held as a matter of first impression that appellate attorney's fees could be awarded for defending a court's sanction order for a discovery violation.

[16] Here, in contrast to the facts in *Georgetown Steel*, involving obstruction of the discovery process by failing to give unreserved answers to thirty-four of forty-three requests for admissions, attorney Myers failed to attend the July 16th depositions after his attorney-client relationship had deteriorated and his motion to quash the depositions was denied. Though a direct violation of the discovery process, and within the court's discretion to sanction, such conduct does not rise to the level of obdurate behavior described in *Georgetown Steel* where appellate fees were permitted.

[17] Further, we find that while attorney Myers did not follow the trial rules on the occasion at issue, he has substantially conformed with our appellate rules in pursuing his challenge to the court's sanctions, and we cannot recommend the calculation or award of appellate fees under Rule 37(A)(4).[2]

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[2] We are aware that counsel for the Shafer defendants takes umbrage to Myers' use of the term "Rambo-style litigator," and the "false claim" language used in reference to the sanctions that were erroneously included in

Conclusion

[18] Based on the foregoing, we conclude that the trial court did not abuse its discretion by imposing Rule 37(D) sanctions here. Hoping to move this litigation closer to its end, we decline to recommend or remand for the imposition of appellate penalties here.

[19] Affirmed.

Riley, J., and Robb, J., concur.

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the court's original sanctions order, in his appellate briefs. *See* Appellant's Br. p. 14; Appellee's Br. p. 15-16. However, as Myers indicated in his reply brief, "Rambo-style litigator" is a term that has been used by courts to describe certain litigation tactics. *See* Reply Br. pp. 9-11. We view the use of this term as advancing Myers' claim not as disparaging opposing counsel. Further, we view the commentary about the motives and inferences to be drawn therefrom concerning the original sanctions order calculation, to be superfluous and not necessary to our determination here, as the court rendered the requested relief as to that portion of the sanctions. We remain hopeful that this contentious litigation will now have reached its conclusion upon our resolution of this appeal.