MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Deanne Sasser,
Appellant/Cross-Appellee-Plaintiff,

v.

State Farm Insurance Company and Kelly Urycki,
Appellees/Cross-Appellants-Defendants.

May 26, 2021

Court of Appeals Case No. 20A-CT-2068

Appeal from the Lake Superior Court

The Honorable John R. Pera, Special Judge

Trial Court Cause No. 45D10-1806-CT-130

Kirsch, Judge.

[1] Deanne Sasser ("Sasser") appeals the trial court's order granting summary judgment in favor of State Farm Insurance Company ("State Farm") and Kelly Urycki ("Urycki") (together, "Defendants") in her action for defamation and breach of contract. She raises the following issues for our review:

I. Whether the trial court erred in granting summary judgment on her claim of defamation because she claims that there are genuine issues of material fact as to whether the statements at issue were actionable as defamation per se or defamation per quod; and

II. Whether the trial court erred in granting summary judgment on her claim of breach of a written contract

> because Sasser failed to identify or produce any written contract that was breached.

Defendants also raise the following cross-appeal issue for our review: whether the trial court erred when it denied Defendants' motion for sanctions which, among other things, sought an order barring Sasser and her counsel from using or retaining confidential and privileged information of State Farm and its insureds in the litigation or for any purpose, ordering Sasser and her counsel to return all privileged and confidential information in their possession to State Farm without retaining any copies, and sought sanctions for fees and costs incurred by Defendants as a result of Sasser's discovery violations.

[2] We affirm and remand with instructions.

Facts and Procedural History

[3] Sasser was hired by State Farm on August 9, 1995 as a Claims Litigation Counsel ("CLC") in the Crown Point, Indiana office. *Appellant's Conf. App. Vol. 2* at 79, 88. In her position as CLC, Sasser represented State Farm and State Farm insureds in personal injury litigation matters covered by insurance policies issued by State Farm. *Id*. at 90. Although Sasser claimed that she signed a "written contract at the time she was hired" in 1995, she did not know the terms of the contract, and a copy of this contract was not provided by either party during this dispute. *Id*. at 78-79, 87. Every year of her employment with State Farm, Sasser signed an acknowledgment that she had read and agreed to follow State Farm's Code of Conduct. *Id*. at 88, 89, 138-47. She understood

that under the Code of Conduct she had an obligation to preserve the confidentiality of State Farm confidential and proprietary information. *Id*. at 89-90, 149-58. Sasser also understood that, as an attorney licensed in Indiana, she had additional confidentiality duties under the Indiana Rules of Professional Conduct. *Id*. at 90. As CLC, Sasser understood that she acted as an attorney for both State Farm and State Farm's insureds. *Id*.

[4] State Farm's Claim Litigation Counsel Memo 91-1 ("Memo 91-1"), which Sasser received and reviewed during her employment, further clarified the ethical obligations of CLC attorneys. *Id*. at 92, 160-69. Sasser understood that neither the Code of Conduct nor Memo 91-1 contained any job protection guarantee if, in her employment, she was given a direction that she believed was contrary to her own professional legal judgment or ethics. *Id*. at 93. If a client asked her to do something that she felt violated the Rules of Professional Conduct, she was required to refuse to do it even if it meant losing her job. *Id*.

[5] In her employment with State Farm, Sasser reported directly to the managing attorney of the Crown Point CLC office, a role held by Carolyn Fehring ("Fehring") since 2011. *Id*. at 83, 183, 188. Sasser also worked closely with State Farm's claims department and interacted with claims representatives and team managers, who supervised the claims representatives assigned to evaluate claims against State Farm and its insureds. *Id*. at 97-98, 101, 190-91, 209-10, 217, 225. Team managers are responsible for staying up to date on the status of a claim, questioning litigation strategy, providing authority for settlement, and providing semi-annual surveys to the managing attorneys of CLC attorneys

with whom they worked to provide feedback on the quality of service received from the assigned attorney. *Id*. at 101, 209-10, 216, 217.

[6] Urycki worked as a team manager in State Farm's claims department. *Id*. at 209. From May 2000 until October 2013, she managed litigation claims that were being handled by attorneys in the Crown Point CLC office, including Sasser. *Id*. at 209, 214. In October 2013, Urycki was transferred to the Downers Grove, Illinois office, and from October 2013 until May 2017, Urycki did not have any interactions with Sasser or other Crown Point CLC attorneys. *Id*. at 98, 116, 117-18, 214, 215. In May 2017, Urycki was assigned to manage Indiana claims and resumed working with the Crown Point CLC office. *Id*. at 215.

[7] During the time that Urycki was working with the Crown Point CLC office, she made two allegedly defamatory statements in reference to Sasser that were made or learned of by Sasser within two years of the filing of the complaint in this action. *Tr. Vol. 2* at 26-27. The first statement was purportedly made by Urycki to John Link ("Link"), a former CLC attorney who worked in the Crown Point CLC office in or around 2012. *Appellant's Conf. App. Vol. 2* at 234. According to Link, in approximately 2012, he was in a meeting with Urycki and another claims representative at the Valparaiso Claims Office to discuss a file review or other project, and Urycki made a comment regarding Sasser that, "just because she has blond hair and big boobs does not make her a good attorney." *Id*. at 211, 234; *Tr. Vol. 2* at 27. This comment did not negatively impact Link's opinion of Sasser, and Link did not report it to anyone until his

deposition in the present case, which occurred in 2019. *Appellant's Conf. App. Vol. 2* at 234, 235, 236.

[8] The second statement occurred in May or June 2017, shortly after Urycki again became responsible for managing Indiana claims. *Id*. at 215, 217. This statement was made during a telephone conference that included Sasser, Fehring, Urycki and Urycki's immediate supervisor, Mark McCaslin ("McCaslin"), and concerned the evaluation of a case that was scheduled to go to trial in August. *Id*. at 108-09, 192, 218. According to Sasser, after she provided her assessment of the case, McCaslin commented "it clearly looks like you don't want to take this case to trial." *Id*. at 109; *Appellant's Conf. App. Vol. 3* at 17. The discussion then turned to whether a "sudden emergency" defense was viable, and Sasser explained why she did not believe that this was a viable defense. *Appellant's Conf. App. Vol. 2* at 194, 218. Urycki commented that she thought that "any competent attorney" could obtain a defense verdict in the case, which Sasser identified as a defamatory statement by Urycki. *Id*. at 111; *Tr. Vol. 2* at 26.

[9] On August 15, 2017, Sasser sent a nine-page letter by e-mail to Fehring and other members of State Farm CLC management, complaining about Urycki's treatment of her throughout the time they worked together. *Appellant's Conf. App. Vol. 2* at 103; *Appellant's Conf. App. Vol. 3* at 12-20. State Farm conducted an investigation into her complaint and concluded that the complaint was unfounded. *Appellant's Conf. App. Vol. 2* at 103, 173. On August 21, 2017, one week before she was set to start trial, Sasser went on a medical leave of absence

due to stress and anxiety and was unable to try the case. *Id*. at 112, 114, 125; *Appellant's Conf. App. Vol. 3* at 23. State Farm granted Sasser's request for a leave of absence and extended her leave multiple times at her request. *Appellant's Conf. App. Vol. 2* at 125 at 173-74; *Appellant's Conf. App. Vol. 3* at 23. In total, Sasser was on leave for one year and seven months, which was beyond what State Farm typically provided under its internal policies. *Appellant's Conf. App. Vol. 2* at 125, 173-74; *Appellant's Conf. App. Vol. 3* at 23.

[10] In January 2019, State Farm offered Sasser the opportunity to return to work in a role that would not require her to work with Urycki or Fehring. *Appellant's Conf. App. Vol. 2* at 121-22, 173-74, 175; *Appellant's Conf. App. Vol. 3* at 25. Sasser declined this position because she stated she was still medically unable to work as an attorney in any capacity. *Appellant's Conf. App. Vol. 2* at 124, 175. Because Sasser declined State Farm's offer to return to work, and had exhausted all available medical leave, State Farm terminated her employment effective March 22, 2019. *Appellant's Conf. App. Vol. 3* at 23.

[11] On May 31, 2018, Sasser filed her original complaint in this matter, and she subsequently filed an amended complaint on September 18, 2018, which alleged defamation against Urycki and State Farm and breach of contract against State Farm. *Appellant's Conf. App. Vol. 2* at 26-30, 31-35. Specifically, Sasser alleged that Urycki made defamatory statements about Sasser in the course of Urycki's employment with State Farm and that State Farm was responsible for the actions of Urycki. *Id*. at 31-33. Sasser further alleged that

she had entered into a written employment agreement with State Farm in 1995, and State Farm breached this contract. *Id*. at 33-34.

[12] On January 25, 2019, State Farm served its First Set of Interrogatories and First Request for Production of Documents on Sasser, which sought production of all documents related to communications by Sasser and any State Farm employee relating to the allegations in the complaint, all documents that referred to, contained, or related to any of the alleged defamatory statements alleged, and all documents related to Sasser's employment with State Farm. *Appellees' App. Vol. II* at 7. In responding to this request, Sasser produced only ten pages of responsive documents, which consisted of Sasser's nine-page letter to State Farm containing confidential information regarding State Farm insureds, and a one-page printout of a case note from State Farm's Legal Files system that contained a confidential communication between Sasser and a claims representative regarding settlement authority in a specific case. *Id*. at 31-40.

[13] On April 23, 2019, State Farm advised Sasser and her counsel that the documents she produced contained confidential and privileged information of State Farm and its insureds and demanded immediate return of all other confidential information in her possession and that she confirm in writing that neither she nor her counsel retained any other confidential and privileged information. *Id*. at 42-43. Sasser did not respond to this letter because it was not made in the form of a formal discovery request. *Id*. at 68, 70. As the litigation progressed, Sasser's counsel introduced as exhibits numerous

confidential and proprietary internal documents of State Farm that had not previously been produced either by State Farm or Sasser in the litigation. *Id*. at 75-76, 109-10, 113. On January 26, 2020, Sasser produced additional documents that contained privileged information of State Farm and State Farm insureds that were directly responsive to State Farm's previous discovery requests. *Id*. at 128. Sasser explained that she had not previously produced these documents because she did not believe she had an obligation to do so because at the time she did not intend on using the documents as evidence at trial. *Id*. at 54-55.

[14] On April 15, 2020, State Farm filed a motion for summary judgment, supporting memorandum, and designated evidence. *Appellant's Conf. App. Vol. 2* at 46, 50-69, 72-73. On April 17, 2020, Urycki filed her motion for summary judgment, supporting memorandum, and designated evidence. *Appellant's Conf. App. Vol. 3* at 40, 41-51. On June 5, 2020, Sasser filed her response to the motions for summary judgment and designated evidence. *Id*. at 52-71, 73-80, 82. On June 19, 2020, Defendants filed their Reply in Support of their Motions for Summary Judgment. *Id*. at 190-204.

[15] On May 1, 2020, Defendants filed a Motion for Discovery Sanctions, Protective Order and Disqualification of Counsel ("the Motion for Sanctions"), which requested that the trial court (1) bar Sasser or her counsel from relying on, disclosing or attempting to elicit through testimony any privileged and confidential information of State Farm or State Farm insureds; (2) require them to return all privileged and confidential information in their possession to State

Farm without retaining any such copies; (3) disqualify Sasser's counsel from further representation of Sasser in this matter; and (4) award Defendants their reasonable costs and attorney fees incurred as a result of Sasser's discovery violations and improper retention and use of confidential and privileged information. *Appellees' App. Vol. II* at 2-5. On July 6, 2020, Sasser filed her Response to Defendant's Motion for Sanctions. *Appellant's Conf. App. Vol. 2* at 21. On July 17, 2020, State Farm filed its Reply in Support of its Motion for Sanctions. *Id*. at 21. The Motion for Sanctions was scheduled for a remote video hearing on July 23, 2020, which was same time as the hearing on Defendants' Motion for Summary Judgment. *Id*. at 21-22. At the hearing, the parties and the trial court agreed to defer argument on the Motion for Sanctions until after ruling on the summary judgment motions because the relief sought in the Motion for Sanctions would depend on the trial court's summary judgment ruling. *Tr. Vol. 2* at 4-5.

[16] The hearing on the summary judgment motions occurred on July 23, 2020, and at the conclusion, the trial court took the matter under advisement. *Id*. at 40. On October 28, 2020, the trial court issued its order granting Defendants' motions for summary judgment as to both the claims of defamation and breach of contract. *Appellant's Conf. App. Vol. 2* at 23-25. In its order, the trial court did not address the merits of the Motion for Sanctions and simply ordered that "[a]ny other motions or claims made by the parties in this case are denied." *Id*. at 25. Sasser now appeals.

Discussion and Decision

Summary Judgment Standard of Review

[17] When reviewing the grant or denial of a motion for summary judgment, we apply the same standard as the trial court: whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Anonymous Dr. A v. Foreman*, 127 N.E.3d 1273, 1276 (Ind. Ct. App. 2019) (citing *Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 973 (Ind. 2005)). We stand in the shoes of the trial court and apply a de novo standard of review. *FLM, LLC v. Cincinnati Ins. Co.*, 973 N.E.2d 1167, 1173 (Ind. Ct. App. 2012) (citing *Cox v. N. Ind. Pub. Serv. Co.*, 848 N.E.2d 690, 695 (Ind. Ct. App. 2006)), *trans. denied*. Our review of a summary judgment ruling is limited to those materials designated to the trial court. Ind. Trial Rule 56(H); *Thornton v. Pietrzak*, 120 N.E.3d 1139, 1142 (Ind. Ct. App. 2019), *trans. denied*. Summary judgment is appropriate only where the designated evidence shows there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. T.R. 56(C). For summary judgment purposes, a fact is "material" if it bears on the ultimate resolution of relevant issues. *FLM*, 973 N.E.2d at 1173. We view the pleadings and designated materials in the light most favorable to the non-moving party. *Id*. Additionally, all facts and reasonable inferences from those facts are construed in favor of the non-moving party. *Id*. (citing *Troxel Equip. Co. v. Limberlost Bancshares*, 833 N.E.2d 36, 40 (Ind. Ct. App. 2005), *trans. denied*). The initial burden is on the moving party to demonstrate the absence of any genuine issue of fact as to a determinative issue,

at which point the burden shifts to the non-movant to come forward with contrary evidence showing an issue for the trier of fact. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

[18] A trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous. *Henderson v. Reid Hosp. and Healthcare Servs.*, 17 N.E.3d 311, 315 (Ind. Ct. App. 2014), *trans. denied*. We will affirm upon any theory or basis supported by the designated materials. *Id*. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having his or her day in court. *Id*.

I. Defamation

[19] Sasser argues that the trial court erred in granting summary judgment in favor of Defendants on her claim of defamation.

> To establish a claim of defamation, a "plaintiff must prove the existence of 'a communication with defamatory imputation, malice, publication, and damages.'" *Trail v. Boys & Girls Clubs of N.W. Ind.,* 845 N.E.2d 130, 136 (Ind. 2006) (quoting *Davidson v. Perron,* 716 N.E.2d 29, 37 (Ind. Ct. App. 1999), *trans. denied*). A statement is defamatory if it tends "to harm a person's reputation by lowering the person in the community's estimation or deterring third persons from dealing or associating with the person." *Kelley v. Tanoos,* 865 N.E.2d 593, 596 (Ind. 2007) (internal citation omitted). One type of defamation action, alleging defamation *per se,* arises when the language of a statement, without reference to extrinsic evidence, constitutes an

> imputation of (1) criminal conduct, (2) a loathsome disease, (3) misconduct in a person's trade, profession, office, or occupation, or (4) sexual misconduct. *Id.; see also Rambo v. Cohen,* 587 N.E.2d 140, 145 (Ind. Ct. App. 1992), *trans. denied; Elliott v. Roach,* 409 N.E.2d 661, 683 (Ind. Ct. App. 1980). In contrast, if the words used are not defamatory in themselves, but become so only when understood in the context of extrinsic evidence, they are considered defamatory *per quod. McQueen v. Fayette Cnty. Sch. Corp.,* 711 N.E.2d 62, 65 (Ind. Ct. App. 1999), *trans. denied.* In actions for defamation *per se,* damages are presumed, but in actions for defamation *per quod,* a plaintiff must prove damages. *Rambo,* 587 N.E.2d at 145-46.

Hrezo v. City of Lawrenceburg, 81 N.E.3d 1146, 1155-56 (Ind. Ct. App. 2017). "Whether a communication is defamatory is a question of law for the court, unless the communication is susceptible to either a defamatory or non-defamatory interpretation -- in which case the matter may be submitted to the jury." *Baker v. Tremco Inc.*, 917 N.E.2d 650, 657 (Ind. 2009).

[20] Sasser asserts that the trial court erred in granting summary judgment as to her claims of defamation because the statements made by Urycki constituted defamation *per se* as Sasser contends that the statements attacked her professional competence in a manner that imputed occupational misconduct. Specifically, Sasser argues that the statement by Urycki that "any competent attorney" could get a defense verdict implicated her competence as an attorney, which is akin to asserting misconduct in her profession because, under the Indiana Rules of Professional Conduct, "incompetence is tantamount to misconduct." *Appellant's Br.* at 17. She also asserts that the trial court erred in granting summary judgment because the statements by Urycki constituted

defamation *per quod* because unfitness to practice is a gravely serious charge in the legal profession, and the evidence in the record shows there was lasting reputational damage caused by Urycki's statements. Sasser claims that Urycki's statements acquired a defamatory meaning when placed in the context of Fehring's testimony in her deposition that incompetence "implies that [a person is] not fit to practice as an attorney in some way or another" when she was asked for her definition of incompetence. *Appellant's Conf. App. Vol. 3* at 138. Because of these contentions, Sasser asserts that summary judgment was not proper because genuine issues of material fact existed as to whether Urycki's statements constituted defamation.

[21] At the summary judgment hearing, it was determined that Sasser was only positing that two statements by Urycki constituted defamation. The first statement, made by Urycki in approximately 2012 to Link but only disclosed at Link's deposition in 2019, was, referring to Sasser, that, "just because she has blond hair and big boobs does not make her a good attorney." *Appellant's Conf. App. Vol. 2* at 211, 234; *Tr. Vol. 2* at 27. The second statement made by Urycki during a telephone conference that included Sasser, Fehring, Urycki and McCaslin, was in refence to the evaluation of a case scheduled to go to trial and after Sasser presented her assessment, which was not in favor of taking the case to trial, Urycki stated, "any competent attorney" could obtain a defense verdict in the case. *Appellant's Conf. App. Vol. 2* at 111; *Tr. Vol. 2* at 26. In its order granting summary judgment, the trial court found that the two statements were not defamatory as a matter of law because they fit none of the required

categories to constitute defamation *per se* and were not capable of objective verification and, therefore, could not be defamation *per quod*. We agree.

[22] Each of Urycki's statements that Sasser asserts constitute defamation express a non-actionable opinion because they are not based on readily verifiable facts. "For a statement to be actionable, it must be clear that it contains objectively verifiable fact regarding the plaintiff." *Meyer v. Beta Tau House Corp.*, 31 N.E.3d 501, 515 (Ind. Ct. App. 2015) (citing *Hamilton v. Prewett*, 860 N.E.2d 1234, 1243 (Ind. Ct. App. 2007), *trans. denied*)). "If the speaker is merely expressing his subjective view, interpretation, or theory, then the statement is not actionable." *Id.* Just because words may be insulting, vulgar or abusive words does not make them defamatory. *McQueen v. Fayette Cnty. Sch. Corp.*, 711 N.E.2d 62, 66 n.1 (Ind. Ct. App. 1999), *trans. denied*. Therefore, a false assertion of fact is required for a statement to be actionable as defamation, and that assertion of fact is what is missing in this case.

[23] The statement made to Link about Sasser's appearance not being sufficient to make her a "good attorney" is not based on readily verifiable facts and for that reason is not defamatory *per se* or *per quod* as a matter of law. To the extent the comment can be construed as a comment on whether Sasser was a "good attorney," the statement is a non-actionable opinion because it cannot be verified as objectively true or false. Sasser attempts to equate an opinion about whether someone is a "good attorney" with an allegation of professional misconduct to satisfy one of the categories of defamation *per se*, citing Indiana Rule of Professional Conduct 1.1. However, in the alleged defamatory

statement, Urycki did not assert that Sasser acted unprofessionally or improperly in reference to a particular case or task so the statement does not impute professional incompetence or misconduct that can be proven true or false. The statement "just because Deanne has blonde hair and big boobs doesn't mean she's a good attorney" may be offensive, but it is not an actionable false statement that is based on readily verifiable facts.

[24] Similarly, the statement that "any competent attorney" could obtain a defense verdict in the case also expresses a non-actionable opinion because it is not based on readily verifiable facts. The statement was made during a telephone conference concerning the evaluation of a case that was scheduled to go to trial and after Sasser provided her assessment of the case, McCaslin initially commented "it clearly looks like you don't want to take this case to trial." *Appellant's Conf. App. Vol. 2* at 109; *Appellant's Conf. App. Vol. 3* at 17. After Sasser explained why she did not believe that there was a viable sudden emergency defense, Urycki commented that she thought that "any competent attorney" could obtain a defense verdict in the case. *Appellant's Conf. App. Vol. 2* at 111, 194, 218. In making this statement, Urycki did not state or even imply that Sasser herself was incompetent or would be unable to obtain a favorable verdict. Instead, she stated her opinion that the case was an easy defense verdict. Even if the statement was construed as a comment about Sasser, it is not possible to verify the truth or falsity of what was no more than Urycki's opinion about the outcome of a future trial and the attorney's role in that outcome. Urycki's statement that any competent attorney could secure a

defense verdict does not contain an objectively verifiable fact regarding the plaintiff and, therefore, is not defamatory as a matter of law.

[25] Although not binding on this court, in *Sullivan v. Conway*, 157 F.3d 1092, 1096 (7th Cir. 1998), the Seventh Circuit, applying Illinois law, succinctly explained why a non-verifiable opinion that someone "was a very poor lawyer" could not support a defamation action. The Seventh Circuit explained that:

> It is one thing to say that a lawyer is dishonest, or has falsified his credentials, or has lost every case he has tried, or can never file suit within the statute of limitations. These are all readily verifiable statements of fact. But to say that he is a very poor lawyer is to express an opinion that is so difficult to verify or refute that it cannot feasibly be made a subject of inquiry by a jury. It is true that prefacing a defamatory statement with the qualification, "In my opinion," does not shield a defendant from liability for defamation. The test is whether a reasonable listener would take him to be basing his "opinion" on knowledge of facts of the sort that can be evaluated in a defamation suit. Here the answer is "no." Legal representation is attended by a great deal of uncertainty. Excellent lawyers may lose most of their cases because they are hired only in the most difficult ones, while poor lawyers may win cases because they turn away all the ones that would challenge their meager abilities. Many lawyers are good at some things and poor at others . . ., so that the evaluation of them will depend on what the evaluator is interested in. It would be unmanageable to ask a court, in order to determine the validity of the defendants' defense of truth, to determine whether "in fact" Sullivan is a poor lawyer.

Id. at 1097. Applying the same reasoning here, Urycki's statements about Sasser's appearance not being sufficient to make her a good attorney and that

any competent attorney could get a defense verdict in a certain case were not based on objective facts that can be evaluated and were too broad and vague to convey any defamatory meaning. *See Baker*, 917 N.E.2d at 657 (statement that plaintiff "had engaged in inappropriate sales practices" was "far too vague and broad to convey any defamatory meaning"). Accordingly, we conclude that the trial court properly granted summary judgment to Defendants as to Sasser's claim of defamation.

II. Breach of Contract

[26] Sasser also argues that the trial court erred when it granted summary judgment as to her claim of breach of contract against State Farm. "To prevail on a claim for breach of contract, the plaintiff must prove the existence of a contract, the defendant's breach of that contract, and damages resulting from the breach." *Haegert v. Univ. of Evansville*, 977 N.E.2d 924, 937 (Ind. 2012). Under Indiana Trial Rule 9.2(A), when a pleading is founded on a written instrument, the original, or a copy thereof, must be included in or filed with the pleading. *Brazaukas v. Fort Wayne-South Bend Diocese, Inc.*, 714 N.E.2d 253, 259-60 (Ind. Ct. App. 1999) (finding a plaintiff's failure to produce the alleged employment agreement fatal to her claim), *trans. denied*. In Indiana, there is also a strong presumption of at-will employment. *Cmty. Found. of Nw. Ind., Inc. v. Miranda*, 120 N.E.3d 1090, 1098 (Ind. Ct. App. 2019) ("in Indiana, the presumption of at-will employment is strong").

[27] Sasser asserts that the trial court erred in granting summary judgment in favor of State Farm on her claim of breach of contract. She contends that, even though she did not produce a written employment contract, her testimony that she signed a written contract at the time that she began her employment with State Farm and that the terms of the contract incorporated other policy guidelines including the Code of Conduct was sufficient evidence to show a genuine issue of material fact and that the trial court should have denied the motion for summary judgment. Sasser further argues that the designated evidence was sufficient to present inferences that she surrendered independent consideration in exchange for her employment and for State Farm's compliance with the terms in the Code of Conduct, employment contract, and other incorporated policies because, when she began her employment with State Farm, she was no longer allowed to practice law outside of her employment. Sasser also asserts that State Farm condoned conduct by Urycki that breached "public policy," essentially arguing that State Farm allowed Urycki to breach the terms of the Code of Conduct when she instructed Sasser to engage in actions that would violate her duty to the insureds and subject Sasser to liability for malpractice and misconduct.

[28] The trial court granted summary judgment in favor of State Farm on the breach of contract claim because no written contract was submitted for consideration by the trial court, and therefore, the trial court could not measure the conduct of State Farm as it related to employment with Sasser. *Appellant's Conf. App. Vol. 2* at 25. In her complaint, Sasser alleged that she "entered into a written

employment contract with State Farm in 1995" and that part of the employment contract was that State Farm would enforce its Code of Conduct with all employees. *Id*. at 133. However, Sasser never produced the contract or identified the documents that make up its terms in the discovery produced by State Farm. In *Brazaukas*, this court held that the failure to include the employment contract at issue in the record compelled dismissal of the plaintiff's breach of contract claim. 714 N.E.2d at 259-60. Therefore, because Sasser failed to include the employment contract that she alleged that State Farm breached, the trial court was not able to make any determination as to the terms of the alleged contract and if any breach occurred.

[29] Further, during her deposition, Sasser acknowledged that she did not know terms of the alleged contract. *Appellant's Conf. App. Vol. 2* at 87. Although she testified that she recalled signing documents regarding the terms of her employment, when asked if those documents made up the alleged contract, she stated, "I couldn't answer that." *Id*. at 81. Sasser alleges that she signed an unidentified written contract that "incorporated" State Farm policies including the Code of Conduct, but she admitted in her deposition that she did not know the terms of the contract at issue. *Id*. at 80, 87, 88, 92. Because there is no contract in the record, and Sasser could not elucidate the terms of alleged employment contract, the trial court was left to speculate as to what was contained in the alleged contract. The trial court did not err when it granted summary judgment on Sasser's breach of contract claim.

[30] Sasser also contends that because she was required to give up practicing law outside of her employment with State Farm, this constituted "independent consideration" sufficient to require State Farm to have good cause to terminate her and be liable for breaches of policy by Urycki that Sasser alleges that State Farm implicitly condoned. *Swan v. TRW v. Inc*. 634 N.E.2d 794 (Ind. Ct. App. 1994), which Sasser herself cites, provides:

> [I]f an employee gives independent consideration for an employment contract, then the employer may terminate the employee only for good cause without incurring liability for its actions. An example of independent consideration is an employee giving up other employment to accept an offer of a permanent job. More specifically, an employer cannot arbitrarily fire an employee when (1) the employer knows the employee had a former job with assured permanency (or assured non-arbitrary firing policies) and (2) was only accepting the new job upon receiving assurances the new employer could guarantee similar permanency.

Id. at 797 (internal citations omitted). Sasser does not allege that State Farm promised her permanent employment or that she gave up any alternative employment based on a promise of permanent employment by State Farm. Further, State Farm did not breach any promise of permanent employment. Sasser remained employed by State Farm for twenty-four years, and her employment was only terminated when she told State Farm that she was no longer willing or able to work as an attorney, even in a position that would not require her to work with Urycki. We, therefore, reject Sasser's contention that

she surrendered independent consideration in exchange for her employment with State Farm.

[31] Sasser additionally argues that State Farm condoned conduct by Urycki that breached "public policy," citing to *McClanahan v. Remington Freight Line Inc.,* 517 N.E.2d 390, 393 (Ind. 1988), which held that an employee may maintain an action for retaliatory discharge if the employee is discharged for refusing to commit an illegal act for which the employee would be personally liable. Sasser was not terminated for refusing to engage in an illegal or unethical act. Instead, the evidence establishes that she was terminated because, after being allowed to take a leave of absence of one year and seven months, which was more than what State Farm typically allows in its written policies, she refused State Farm's offer to return to a position where she would have no contact or involvement with Urycki and claimed she was still unable to work as an attorney in any capacity. *Appellant's Conf. App. Vol. 2* at 121-22, 125,173-74, 175; *Appellant's Conf. App. Vol. 3* at 25. We, therefore, conclude that the trial court properly granted summary judgment as to Sasser's breach of contract claim.

III. Cross-Appeal

[32] Defendants argue on cross-appeal that the trial court abused its discretion when it denied the Motion for Sanctions. Decisions concerning the imposition of sanctions for discovery violations fall within the trial court's sound discretion. *Reed v. Cassidy*, 27 N.E.3d 1104, 1111 (Ind. Ct. App. 2015) (citing *Whitaker v. Becker,* 960 N.E.2d 111, 115 (Ind. 2012)), *trans. denied*. "Trial judges stand

much closer than an appellate court to the currents of litigation pending before them, and they have a correspondingly better sense of which sanctions will adequately protect the litigants in any given case, without going overboard, while still discouraging gamesmanship in future litigation." *Id.* We therefore review a trial court's ruling on a motion for discovery sanctions for an abuse of discretion. *Id.*

[33] Defendants contend that the trial court abused its discretion in summarily denying the Motion for Sanctions without a hearing. Specifically, Defendants assert that by failing to address the merits of the Motion for Sanctions and instead summarily denying "all other pending motions," the trial court deprived this court of an adequate record to determine whether, in fact, the trial court appropriately exercised its discretion in this case. Defendants argue that, based on Sasser's reliance on privileged and confidential information and her violation of her obligations to timely respond to discovery requests, sanctions were warranted.

[34] The Motion for Sanctions requested that the trial court (1) bar Sasser or her counsel from relying on, disclosing or attempting to elicit through testimony any privileged and confidential information of State Farm or State Farm insureds; (2) require them to return all privileged and confidential information in their possession to State Farm without retaining any such copies; (3) disqualify Sasser's counsel from further representation of Sasser in this matter; and (4) award Defendants their reasonable costs and attorney fees incurred as a result of Sasser's discovery violations and improper retention and use of

confidential and privileged information. *Appellees' App. Vol. II* at 2-5. As to Defendants' requests to bar Sasser from using any privileged and confidential information and to disqualify Sasser's counsel from further representation in this matter, our affirmance of the trial court's grant of summary judgment makes such requests moot as a final judgment has been achieved, and the case is no longer pending. As to Defendants' request for their reasonable costs and attorney fees, we find that, even though the trial court did not specifically address the merits, when it made the determination to deny the Motion for Sanctions, the trial court had before it Defendants' Motion for Sanctions and its multiple exhibits and Sasser's response to the Motion for Sanctions and corresponding evidence. We, therefore, conclude that the trial court had sufficient evidence before it to make its determination, was in the best position to decide whether sanctions were warranted, and therefore, did not abuse its discretion when it denied the request for reasonable costs and attorneys fees.

[35] However, we do note that the dismissal of Sasser's claims on summary judgment did not fully remedy the potential harm caused by her retention of confidential and privileged information of State Farm and its insureds. Therefore, to the extent that Sasser and her counsel still have confidential and privileged information of State Farm and State Farm insureds, we remand for the trial court to order that Sasser and her counsel return all privileged and confidential information in their possession to State Farm without retaining any copies of such information and to bar Sasser and her counsel from disclosing or relying upon confidential and privileged information of State Farm or State

Farm insureds in the future at any time and for any purpose. We, therefore, conclude that the trial court did not abuse its discretion in denying the Motion for Sanctions but remand for the limited purpose of ordering the return of any privileged and confidential information in the possession of Sasser and her counsel.

[36] Affirmed and remanded with instructions.

Altice, J., and Weissmann, J., concur.