

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 2382

JANICE HORNOT

VERSUS

STEPHEN R. WILSON AND JOHN R. KEOGH

Judgment Rendered: June 8, 2007.

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On Appeal from the  
19th Judicial District Court,  
In and for the Parish of East Baton Rouge,  
State of Louisiana  
Trial Court No. 536,666

Honorable Timothy E. Kelley, Judge Presiding

\* \* \* \* \*

Stephen H. Shapiro  
Baton Rouge, LA  
and  
William L. Goode  
Lafayette, LA

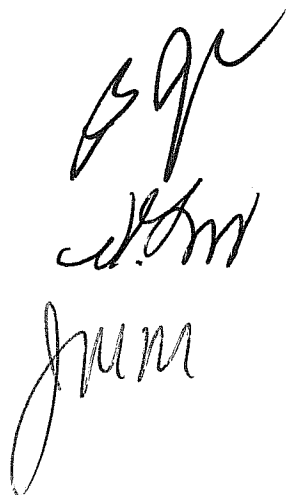
Counsel for Plaintiff/Appellant,  
Janice M. Hornot

Stephen R. Wilson,  
Brian W. Hightower  
Baton Rouge, LA

Counsel for Defendants/Appellees,  
John R. Keogh and Stephen R. Wilson

\* \* \* \* \*

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.



CARTER, C.J.

This is an appeal of a judgment sanctioning the plaintiff, an attorney who was representing herself in the matter, under LSA-C.C.P. art. 863.

### **FACTS AND PROCEDURAL HISTORY**

In 1994, Hornot, an attorney, and her former employer, the law firm of Keogh, Cox & Wilson, (as well as individual members of the law firm, including John R. Keogh and Stephen R. Wilson), entered a settlement agreement, which resulted in the dismissal of a lawsuit Hornot had filed against the law firm. The settlement agreement provided that Hornot would be paid “a sum certain in money” at the time of the signing of the agreement. Hornot was paid, by check, the amount of \$40,000.00. The law firm then issued Hornot a Form 1099 for tax year 1994. The law firm did not withhold or pay taxes on the settlement funds. Eventually, the IRS seized from Hornot’s bank account approximately \$18,508.52 in unpaid taxes.

For more than a decade, Hornot has attempted to recoup the taxes owed on the settlement funds. Hornot has sent the law firm and various members of the law firm repeated correspondence regarding the taxes and the law firm’s legal position regarding the tax liability. In 2004, Hornot filed suit against the law firm contending, among other things, that it breached the settlement agreement by failing to pay the applicable taxes. The trial court dismissed the suit on the basis of prescription. Although Hornot filed two motions and orders for appeal, the record reflects no further action taken in connection with an appeal. These events prompted representatives of the law firm to contact the Louisiana Attorney Disciplinary Board.<sup>1</sup>

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<sup>1</sup> The Disciplinary Board’s file on that matter was closed based on the law firm’s representation that the matter had been resolved after the law firm initiated contact with the Disciplinary Board.

In 2005, Hornot filed suit against Stephen R. Wilson & John R. Keogh, individually, based on the same complaints of the law firm's failure to pay taxes on the settlement funds. The trial court sustained the defendants' peremptory exception raising the objection of prescription and dismissed the suit.<sup>2</sup> This court affirmed that judgment in the companion case of **Hornot v. Stephen R. Wilson and John R. Keogh**, 06-2382 (La. App. 1 Cir. \_\_\_\_ ) (unpublished).

After rendering judgment on the exception and dismissing Hornot's suit, the trial court sanctioned Hornot under LSA-C.C.P. art. 863, ordering that Hornot: 1) pay the defendants \$13,700.00 for costs associated with this litigation; 2) pay a fine of \$500.00 to the Nineteenth Judicial District Court (19th JDC) Judicial Expense Fund; 3) pay all costs associated with this litigation; 4) pay interest on the amounts ordered from the date the rule for sanctions was filed; 5) be barred from appearing before Division F, Section 22 of the 19th JDC; and 6) write separate letters of apology to each of the parties at the law firm, and to the 19th JDC, within thirty days. Hornot has suspensively appealed. Defendants have answered the appeal, seeking an increase in the amount of sanctions imposed by the trial court's judgment as a result of this appeal.

## DISCUSSION

In order to impose sanctions, a trial court must first find that one of the affirmative duties imposed by LSA-C.C.P. art. 863B has been violated. Under the provisions of LSA-C.C.P. art. 863B, an attorney certifies four things upon signing a pleading: 1) that the attorney has read the pleading; 2) that to the best of the attorney's knowledge, information and belief formed

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<sup>2</sup> The suit against Keogh & Wilson individually was assigned to and decided by Division F of the 19th JDC, while the suit against the law firm was assigned to and decided by Division D of the 19th JDC.

after reasonable inquiry, the pleading is well grounded in fact; 3) that the pleading is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and 4) that the pleading is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. A violation of any one of these duties fatally infects the entire certification. **Connelly v. Lee**, 96-1213 (La. App. 1 Cir. 5/9/97), 699 So.2d 411, 414, writ denied, 97-2825 (La. 1/30/98), 709 So.2d 710. A trial court's factual determination that LSA-C.C.P. art. 863 was, or was not, violated is reviewed on appeal pursuant to the manifest error or clearly wrong standard. **Lafourche Parish Council v. Breaux**, 02-1565 (La. App. 1 Cir. 5/9/03), 845 So.2d 645, 648.

In its oral reasons for finding that LSA-C.C.P. art. 863 was violated, the trial court stated:

The Court believes you knew darn well you had no cause of action and the matter had prescribed. The Court believes that when you did this, you did it for the purpose to harass and to increase their costs so as to try and squeeze more money out of them. . . It was totally improper. It was wrong. The Court believes you knew it was wrong when you did it. Based upon the correspondence, the emails, everything I have seen in this, it's clear to me that you did not have good faith in filing this, that it was done to try and squeeze money out of these people, just to harass them to the point where they'd pay you to go away.

In reviewing this matter, we are mindful that where there is even the slightest justification for the assertion of a legal right, sanctions are not warranted. **Tubbs v. Tubbs**, 96-2095 (La. App. 1 Cir. 9/19/97), 700 So.2d 941, 945. We find, however, that Hornot's petition is not warranted by existing law. Moreover, the totality of the record evidence clearly supports the trial court's finding that Hornot violated LSA-C.C.P. art. 863 in filing suit herein. Accordingly, we find no manifest error in the trial court's determination that LSA-C.C.P. art. 863 was violated.

Once the trial court finds a violation of LSA-C.C.P. art. 863 and imposes sanctions, the determination of the type and/or the amount of the sanction is reviewed on appeal utilizing the abuse of discretion standard. **Dubois v. Brown**, 01-0816 (La. App. 1 Cir. 5/10/02), 818 So.2d 864, 866, writ denied, 02-1654 (La. 10/14/02), 827 So.2d 421.

The sanctions imposed by the trial court include the payment to defendants of \$13,700.00 for “costs of defendants.” Hornot contends the trial court abused its discretion in awarding the defendants \$13,700.00 in “attorney fees.” She argues that the defendants are attorneys who either represented themselves or were represented by members of their law firm, and, are therefore precluded from recovering attorneys fees, citing the case of **Lamz v. Wells**, 05-1497 (La. App. 1 Cir. 6/9/06), 938 So.2d 792.

Louisiana Code of Civil Procedure article 863 provides that once the court determines that the article has been violated, it shall impose “an appropriate sanction which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney’s fee.” Four factors that *must* be considered in setting an amount of sanctions are: 1) the conduct being punished or sought to be deterred by the sanction; 2) the expenses or costs caused by the violation of the rule; 3) whether the costs or expenses were reasonable as opposed to self-imposed, mitigatable, or the result of delay in seeking court intervention; and 4) whether the sanction is the least severe sanction adequate to achieve the purpose of the rule under which it was imposed. **Dubois**, 818 So.2d at 867.

At the hearing on the motion for sanctions, Stephen Wilson testified that members of his firm had spent at least 91.5 hours in connection to this litigation. Wilson explained that the figure did not include time spent in the

month prior to the sanction hearing. Wilson testified that if an hourly rate of \$150.00 per hour were applied to the figure, the total would be approximately \$13,700.00.<sup>3</sup> The trial court ordered Hornot to pay that amount to defendants as costs.

We disagree with Hornot's characterization of the \$13,700.00 monetary sanction imposed on her as an award of attorney's fees to the defendants. According to Wilson's testimony, Hornot's violation of LSA-C.C.P. art. 863 cost the defendants and their law firm 91.5 hours that could have been spent working on other matters. If that time were billed at an average rate of \$150.00 per hour for those 91.5 hours, then the firm could have earned at least \$13,700.00 during that lost time. Thus, Hornot's rule violation can be quantified as costing the defendants \$13,700.00 – not in attorney's fees incurred defending her suit, but in fees that could have been generated during the time spent defending her suit.

Sanctions under LSA-C.C.P. art. 863 serve to prevent abuse of the judicial process. See Rochon v. Roemer, 93-2444 (La. 1/7/94), 630 So.2d 247, 248, cert. denied, 512 U.S. 1224, 114 S.Ct. 2716, 129 L.Ed.2d 841 (1994). The trial court characterized Hornot's actions as "one of the most egregious examples of attorney misconduct that I have ever seen," and, "the most unprofessional activities over an extended course of time that this court has ever seen or could imagine have happen." The trial court concluded that, "[i]t's just wrong." The trial court determined that sanctioning Hornot to pay defendants \$13,700.00 in costs was appropriate under these facts to achieve the purpose of LSA-C.C.P. art. 863. After reviewing the record

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<sup>3</sup> Hornot objected to Wilson's testimony on grounds that billing records had not been provided during discovery. However, the discovery request was that defendants produce documents intended to be introduced at trial. Wilson stated he did not intend to introduce the documents, and in fact did not offer them as evidence. Accordingly, we find no violation of any discovery rule. Additionally, we are not persuaded by Hornot's argument that Wilson's testimony amounted to inadmissible hearsay.

herein, we find no abuse of the trial court's discretion in setting this amount. We likewise find no abuse of the trial court's discretion in imposing a \$500.00 fine payable to the 19th JDC's Judicial Expense Fund.

In addition to ordering the payments previously discussed, the trial court ordered Hornot to write letters of apology to it and the defendants. Considering the trial court's oral reasons for judgment we find no abuse of discretion in this order. See, e.g., Sanders v. Gore, 95-660 (La. App. 3 Cir. 7/10/96), 676 So.2d 866, 875, writ denied, 96-2072 (La. 11/15/96), 682 So.2d 762.

Finally, the trial court barred Hornot from appearing before Division F of the 19th JDC for a period of one year. We recognize the trial court's frustration and appreciate its efforts to curtail litigation abuse. However, we are constrained to find that the trial court exceeded its authority under LSA-C.C.P. art. 863 in imposing this restriction. See Rochon, 630 So.2d at 248; see also, In re: Jefferson, 99-1313 (La. 1/19/00), 753 So.2d 181, 191 (holding that a trial judge's ban of an attorney from his courtroom until the trial judge received an apology from the attorney "constituted an extreme and unwarranted abuse of his judicial authority"). Thus, we must vacate this provision of the trial court's judgment.

#### ANSWER TO APPEAL

Defendants have answered Hornot's appeal, requesting that this court increase the amount of sanctions awarded in the trial court's judgment as a result of this appeal. The ability to impose sanctions under LSA-C.C.P. art. 863 is limited to the trial court. Hampton v. Greenfield, 618 So.2d 859, 862 (La. 1993).

## **CONCLUSION**

Considering the foregoing, that provision of the trial court's judgment barring Hornot from appearing before Division F of the 19th JDC for a period of one year is vacated. In all other respects, the judgment is affirmed.

Costs of appeal are assessed to Janice M. Hornot.

**JUDGMENT VACATED IN PART AND AFFIRMED.**