



Michael Francis files this interlocutory appeal<sup>1</sup> to contest the trial court's order granting attorney fees and costs to Lawrence T. Newman as a sanction for discovery violations in Newman's case against Francis for unpaid attorney fees from an unrelated case.

Francis raises the following restated and consolidated issues:

- I. Whether the trial court erred when it ordered Francis to pay attorney fees and costs to Newman without first holding a hearing; and
- II. Whether the trial court abused its discretion when it awarded attorney fees and costs as a sanction for Francis's failure to comply with discovery orders.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

This interlocutory appeal arises from a lawsuit to collect unpaid attorney fees incurred in a case where Newman represented Francis in Francis's role as personal representative of an estate. On May 2, 2007, Newman filed a complaint for damages seeking unpaid attorney fees and collection costs from Francis. Francis was originally represented by counsel, but his attorney was granted leave to withdraw her appearance on November 21, 2007. During the course of Newman's suit, Francis filed several motions and other filings which required responses from Newman.

On November 26, 2007, Francis filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction" and, subsequently, an amended memorandum of law in support of the motion to dismiss. Newman filed a response to these filings on January 23, 2008. *Appellant's App.* at

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<sup>1</sup> This is an interlocutory appeal of right under Indiana Appellate Rule 14(A)(1) as it is an appeal from the entry of an interlocutory order for the payment of money.

4. A hearing was held, and the trial court denied Francis's motion. On February 20, 2008, Francis filed a "Motion for Extension of Time to Find Suitable Counsel and Time to Respond [to] Issues Raised During the January 28th 2008 Hearing," which Newman filed a response to on March 4, 2008. *Id.* at 81.<sup>2</sup> On May 2, 2008, Francis filed a "Motion for Protective Order for Defendant's [sic] [Francis's] Answers to Interrogatories" and a "Motion for Protective Order for Defendant's [sic] [Francis's] Responses to the Document Production Requests." *Id.* at 93, 96. Newman filed responses to both of these motions, and on May 15, 2008, the trial court issued orders denying the motions for protective order. On the same date, Francis filed his "Defendant's Motion to Quash Plaintiff's Order for Discovery and Return of All Records of the Estate . . . Being Held by [Newman]" ("motion to quash"), which Newman responded to on May 29, 2008. *Id.* at 106.

On June 11, 2008, the trial court issued its order denying Francis's motion to quash and awarding Newman "attorney fees and costs in opposing said Motion and previous similar motions filed by Francis and denied by the Court." *Id.* at 33. Francis moved to vacate this order on the basis that he had not timely received Newman's response to the motion to quash, and the trial court vacated its order. Newman subsequently filed a request for a ruling on Francis's original motion to quash, and on July 18, 2008, the trial court issued an order again denying Francis's motion and awarding Newman attorney fees. Thereafter Newman submitted a fee statement, in which he detailed the amount of attorney fees he sought for

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<sup>2</sup> We note that the appellant's appendix is not sequentially paginated and that there are two pages numbered as 81. The document cited is located on the second page 81. Indiana Appellate Rule 51(C) states, "All pages shall be numbered at the bottom consecutively . . ." We caution Francis that he is to follow the appellate rules.

responding to Francis's many motions. On August 7, 2008, the trial court issued its order granting attorney fees and costs to Newman in the amount of \$5,019.69. Francis now appeals.

## **DISCUSSION AND DECISION**

“A trial court enjoys broad discretion when ruling upon discovery matters, and we will interfere only when an abuse of discretion is apparent.” *Smith v. Smith*, 854 N.E.2d 1, 4 (Ind. Ct. App. 2006). An abuse of discretion occurs when the decision is against the logic and effect of the facts and circumstances of the case or if a trial court misinterprets the law. *Vernon v. Kroger Co.*, 712 N.E.2d 976, 982 (Ind. 1999), *disagreed with on other grounds*. Because of the fact-sensitive nature of discovery matters, a trial court's ruling is given a strong presumption of correctness. *Smith*, 854 N.E.2d at 4. A trial court is also given broad discretion in determining the appropriate sanctions for a party's failure to comply with discovery orders. *Id.* A trial court may impose various sanctions for discovery violations, including an award of costs and attorney fees, exclusion of evidence, dismissing the action, or rendering a judgment by default. *Peters v. Perry*, 877 N.E.2d 498, 499 (Ind. Ct. App. 2007). “Absent clear error and prejudice, the trial court's determinations with respect to violations and sanctions should not be overturned.” *Smith*, 854 N.E.2d at 4-5.

### **I. Right to Hearing**

Francis argues that the trial court erred when it sanctioned him and awarded attorney fees to Newman without first conducting a hearing. He contends that a hearing should have been held in order to allow him an opportunity to respond to Newman's allegations. He

claims that the failure to hold a hearing in which to allow him to respond to Newman's allegations violated his due process rights.

“When a petition for sanctions is filed, the court must ordinarily conduct a hearing thereon to determine whether one of the enumerated reasons for not imposing sanctions exists.” *Baughman v. State*, 777 N.E.2d 1175, 1177 (Ind. Ct. App. 2002). A trial court may take judicial notice of reasonable attorney fees in routine cases involving relatively small amounts. *McGehee v. Elliott*, 849 N.E.2d 1180, 1190 n.3 (Ind. Ct. App. 2006), *trans. denied* (2008). However, in non-routine cases, the trial court must hold a hearing to determine the appropriate amount of fees. *South v. White River Farm Bureau Co-op.*, 639 N.E.2d 671, 674 (Ind. Ct. App. 1994), *trans. denied*.

Here, Newman, in his response to Francis's motion to quash, requested that the trial court deny the motion and award attorney fees to Newman. The trial court denied Francis's motion to quash and awarded Newman attorney fees, but subsequently vacated its order because Francis had not been timely served Newman's response. After Newman filed a request for a ruling on the motion to quash and a tender of his fee statement, the trial court again denied the motion and awarded Newman \$5,019.69 in attorney fees. No hearing was held regarding the award of attorney fees and costs or the amount of such fees.

Assuming without deciding that the trial court erred when it sanctioned Francis and awarded attorney fees to Newman without first holding a hearing, Francis has not made any showing of prejudice from such an error. “Absent clear error and prejudice, the trial court's determinations with respect to violations and sanctions should not be overturned.” *Smith*,

854 N.E.2d at 4-5. As Francis has not shown any resulting prejudice from the trial court's failure to hold a hearing before awarding attorney fees to Newman, we decline to overturn the trial court's determination.

## **II. Award of Attorney Fees**

Francis argues that the trial court abused its discretion when it awarded attorney fees and costs to Newman. He contends that an award of attorney fees was improper because his motions were not frivolous, unreasonable, or groundless. He claims that by filing the motions he was merely providing himself with an aggressive defense. Francis also asserts that Newman's attorney fees were unreasonable and should be diminished if not found to be an abuse of discretion.

As previously stated, a trial court is given broad discretion in determining the appropriate sanctions for a party's failure to comply with discovery orders. *Smith*, 854 N.E.2d at 4. A trial court may impose various sanctions for discovery violations, including an award of costs and attorney fees, exclusion of evidence, dismissing the action, or rendering a judgment by default. *Peters*, 877 N.E.2d at 499. Because of the fact-sensitive nature of discovery matters, a trial court's ruling is given a strong presumption of correctness. *Smith*, 854 N.E.2d at 4.

Here, Francis filed a number of motions during the discovery process of this case, which required responses from Newman. Newman argued, and the trial court agreed, that Newman should be awarded attorney fees for having to defend against these motions as they were repetitive and frivolous. Although Francis argues that the trial court abused its

discretion because his motions were not frivolous, unreasonable, or groundless, he does not make any showing of why this is so. He merely makes the assertion that his motions were not frivolous, but presents no basis for the claim. Further, as to this argument that the amount of attorney fees were not reasonable and should be diminished as a policy matter, Francis does not cite to any existing public policy or any legal authority to support his argument. “[W]e will not consider an appellant’s argument on appeal when he has not presented a cogent argument supported by authority and references to the record as required by the [appellate] rules.” *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003). We conclude that the trial court did not abuse its discretion when it awarded attorney fees and costs to Newman.<sup>3</sup>

Affirmed.

RILEY, J., and MATHIAS, J., concur.

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<sup>3</sup> In his appellee’s brief, Newman raises the issue that he should be entitled to appellate attorney fees because Francis’s brief and appendix do not conform to the Indiana Rules of Appellate Procedure. While we acknowledge that Francis’s appellant’s brief and appendix do contain violations of the appellate rules, we do not find these violations to be so egregious as to warrant an award of appellate attorney fees to Newman. We do once again caution Francis that “[a]n appellant who proceeds pro se is ‘held to the same established rules of procedure that a trained legal counsel is bound to follow’” and that he is to follow the appellate rules. *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (quoting *Ramsey v. Review Bd. of Ind. Dep’t of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003)).