

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

LARUSSO D.C. P.A. OF WELLINGTON,
As Assignee of WILLIAM WILKINSON

APPELLATE DIVISION (CIVIL): "AY"
Case No.: 502012AP000022XXXXMB

Appellant,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Appellee.

Opinion filed: **AUG 29 2013**

✓Appeal from the County Court, in and for Palm Beach County, Florida
Judge Caroline Shepherd

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Appellant, LaRusso D.C. P.A. of Wellington, appealed the lower court's Order of Dismissal, with prejudice, of the action below against Appellee, State Farm Mutual Automobile Insurance Company. LaRusso argues that the lower court abused its discretion in doing so. We disagree with LaRusso and therefore affirm the lower court's decision. Due to Appellant's conduct below, we find it necessary to adopt and incorporate the Order of Dismissal, and cite to it in relevant part.

In its Order of Dismissal, the lower court made several findings of fact, including but not limited to the following, of which this Court found most compelling and influential in its decision to affirm:

- (1) "Dresner testified in the November 2010 trial on behalf of State Farm as its medical expert."
- (2) Prior to the trial, Dresner had a friendly, professional relationship with LaRusso.
- (3) "Dresner was aware that LaRusso was appointed by two former Florida Governors, served on the Board of Chiropractic Medicine, and has (as he stated) the power to revoke chiropractic licenses."
- (4) Dresner testified that on November 30, 2010, after Dresner had testified in the trial, that he returned a call or calls from LaRusso at approximately 5:45 p.m. in which LaRusso asked, "What happened today, Dave?" After Dresner asked what he meant, LaRusso said, "My girl told me you changed your story." Dresner said LaRusso was outraged and went on to say, "I'm going to get your testimony transcript. I'm on the hook for \$50,000-60,000 in attorney's fees. I know all the regulators. If this case doesn't turn out my way I'll be sure to return the favor."
- (5) "Dresner stated that LaRusso made the perceived threats multiple times during the conversation."
- (6) "Dresner stated that he felt threatened; that he believed LaRusso was capable of carrying out the threat."
- (7) "Dresner's income is dependent upon maintaining his chiropractic license. He and his family would be substantially impacted financially if he lost his license and could no longer work as a chiropractor."
- (8) "LaRusso testified that he never made any threatening remarks to Dresner. When specifically asked about the statements Dresner said LaRusso made, LaRusso testified, 'It never happened.'"
- (9) "In evaluating the credibility of the witnesses, Dresner was more convincing and appeared more genuine He answered the questions directly and was not shaken from the facts as he related them again under cross-examination Dresner's description of the events, when coupled with his demeanor while testifying was logical and believable. . . . He had no interest whatsoever in the outcome of the case. Furthermore, there was no credible evidence offered to show why he would fabricate the entire conversation."

- (10) "LaRusso, on the other hand, did not appear as forthcoming and frank as Dresner. . . . His explanation that it never happened did not make sense in light of the circumstances. The Plaintiff, LaRusso has a substantial vested interest in the outcome of this litigation."
- (11) "The misconduct at issue was not the result of mistake or negligence, but rather was willful, deliberate and purposeful."
- (12) "There is no precise way to measure the damage done to Defendant's entitlement to a fair trial. And there is no remedy that can repair the damage."
- (13) "The Court balanced the proposed remedies put forth. . . . as well as less severe sanctions and concludes that because the deliberate conduct was undertaken by the Plaintiff himself, there is no lesser sanction that can restore the Defendant to his position prior to the statements having been made. Further, and equally important is the goal of preserving inviolate the sanctity of the judicial process. The Court can think of no other remedy that would serve that end sufficiently and still allow the Plaintiff to pursue its cause."

It is clear to the Court that that lower court did not abuse its discretion when it dismissed the action with prejudice. LaRusso's conduct warranted a dismissal and there was no other sanction that would sufficiently remedy such. Accordingly, we AFFIRM the lower court's Order of Dismissal. State Farm's Motion for Appellate Attorney's Fees is GRANTED, subject to the lower court finding entitlement below to attorney's fees under section 768.79, Florida Statutes (2012). This matter is REMANDED to the lower court to determine a reasonable amount thereof.

BRUNSON, G. KEYSER, BROWN, JJ., concur.