

FLORIDA DISTRICT COURT OF APPEAL, FIFTH DISTRICT

**Leslie Voyles, as Administratrix of the Estate of Richard C. Baxter v.
Grace Anne Glavin and Estate of Bobbye J. Kreisberg, deceased**

___ So. 3d ___, 2022 WL 634537 (Fla. 5th DCA 2022) · No. 5D20-2739

SUMMARY

The Florida Fifth District Court of Appeal held that a voluntary dismissal of a will contest immediately ends the litigation and divests the trial court of jurisdiction to entertain a subsequently filed motion for attorney's fees as sanctions. The court further held that imposing attorney's fees under the inequitable conduct doctrine without prior notice in the motion and a meaningful opportunity to be heard violates due process. The probate court's \$220,042.82 fee award was quashed.

OPINION

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N THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

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OT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED
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IE VOYLES, AS ADMINISTRATRIX
OF THE ESTATE OF RICHARD C. BAXTER,
Appellant, v. Case No. 5D20-2739 LT Case No. 2017-CP-001341
GRACE ANNE GLAVIN AND ESTATE
OF BOBBYE J. KREISBERG, DECEASED,

A ppellee. _ _____/ O pinion filed March 4, 2022 Appeal from
the Circuit Court for Seminole County, John D. Galluzo, Judge. Robert C. Wilkins, Jr., of Robert
C. Wilkins, Jr., PL, Orlando, for Appellant. Alan B. Taylor, of Alan B. Taylor & Associates, P.A.,
Orlando, and Heather C. Kirson, of The Elder Law Center of Kirson & Fuller, P.A., Orlando, fo r
Appellee. 2 EDWARDS, J. A ppellant, Richard C. Baxter, 1 appeals the final judgment entered
against him that granted Appellee's, Grace Anne Glavin, Personal Representative, motion for
attorneys' fees and costs, awarding her \$220,042.82 following termination of a will contest.
Baxter makes several arguments, two of which merit reversal. First, Baxter correctly argues that
the probate court lacked jurisdiction to entertain Glavin's motion because it was filed after he
withdrew his objections to the probate of the will and her appointment as personal representative.

Second, Baxter correctly argues that he was denied due process of law because the attorneys' fees and costs judgment was entered as sanctions against him, explicitly and exclusively based upon the inequitable conduct doctrine, despite the fact that Glavin's motion made absolutely no mention of sanctions, bad faith, or inequitable conduct. Accordingly, we quash the final judgment, remand for entry of an order denying Glavin's motion to tax attorneys' fees and costs with prejudice, and for further proceedings granting Baxter relief from that judgment.

1 Richard C. Baxter, a resident of Mississippi, passed away during the pendency of this appeal. Leslie Voyles was appointed in Mississippi as the Administratrix of his estate and has properly been substituted herein to pursue the appeal and to seek appropriate relief.

3 The decedent in the underlying probate matter was Baxter's sister, Bobbye Kreisberg. Glavin was the attorney who prepared Kreisberg's 2014 will that left nothing to Baxter and created a trust which benefitted several charities. The 2014 will designated Glavin as personal representative of the estate and named her as trustee. Baxter objected to Glavin's efforts to probate the 2014 will and to the appointment of Glavin as personal representative.

2 Baxter's will contest was based on claims that his sister lacked testamentary capacity at the time the will was executed and further allegations that Glavin had employed undue influence. Baxter alleged that Kreisberg's 1999 will, naming him personal representative, should have been probated instead. After a few hearings, some written discovery with attendant objections, and one deposition, Glavin succeeded in having the 2014 will provisionally admitted to probate, subject to a trial on the issues of testamentary capacity and undue influence. Shortly before trial, Baxter terminated the will contest litigation by filing a written withdrawal of all objections to probate of the 2014 will and to appointment of Glavin as personal representative of his sister's

2 Glavin was proceeding via a petition to prove and probate a lost will, namely the 2014 will that Glavin prepared, maintained for safe keeping, and then misplaced after reviewing it within days following Kreisberg's death.

4 estate. Letters of administration were promptly thereafter issued to Glavin who proceeded to administer the decedent's estate. Nearly a month after Baxter withdrew his objections and ended all the probate litigation, Glavin filed a motion to tax fees and costs against Baxter. Glavin's motion stated it was made "pursuant to principles of equity applicable to chancery actions," and cited to sections 57.041, 57.105, 733.106, 733.609, Florida Statutes (2020), and Florida Rules of Civil Procedure 1.420 and 1.525 as authority. There was no mention in the motion of "sanctions," "the inequitable conduct doctrine," "bad faith," or anything remotely similar to any of those terms. The hearing on Glavin's motion was set for November 10, 2020, which was during the COVID-19 pandemic. Approximately one week before the hearing on Glavin's motion to tax fees and costs, she filed 180 pages of affidavits and billing invoices from the several attorneys that she had employed during the three-year-long will contest. None of those documents mentioned sanctions, inequitable conduct, bad faith, or anything remotely similar. Baxter chose not to travel from Mississippi to attend the hearing in Seminole County, Florida; however, his attorney was present. On the day of the hearing, at noon, Glavin filed a notice of additional authorities in support of her motion to tax fees and costs against

Baxter, which was the first 5 reference to the inequitable conduct doctrine. “The inequitable conduct doctrine permits the award of attorney’s fees where one party has exhibited egregious conduct or acted in bad faith.” *Bitterman v. Bitterman*, 714 So. 2d 356, 365 (Fla. 1998). “[T]his doctrine is rarely applicable. It is reserved for those extreme cases where a party acts ‘in bad faith, vexatiously, wantonly, or for oppressive reasons.’” *Id.* (internal citations omitted). Glavin was the only witness who testified live during the hearing as the parties stipulated that the probate court did not need expert testimony and that the attorneys’ affidavits and bills could be considered. There was no transcript of the hearing. Both sides, as ordered, submitted proposed final judgments. Within twenty-four hours of submission and without a single edit, the probate court signed the proposed judgment submitted by Glavin. The inequitable conduct doctrine was the sole basis relied upon by the probate court for sanctioning Baxter with attorneys’ fees and costs totaling \$220,042.82. The probate court’s final judgment did not mention any of the statutes or rules Glavin relied upon in her motion to tax attorneys’ fees. Despite well-settled law that requires orders awarding attorney’s fees to set forth explicit findings as to the number of hours reasonably expended and the reasonable hourly rate for the type of litigation involved, the final judgment submitted by Glavin and 6 entered by the probate court failed to make any such findings regarding any of the legal professionals who had represented Glavin. 3 Because our reversal relies upon the lack of jurisdiction and denial of due process, we need not address this aspect further at this point.

Lack of Jurisdiction Whether a trial court retains jurisdiction over a party after it voluntarily withdraws its litigated claim is a question of law reviewed *de novo*. *Dep’t of Rev. o/b/o Venzen v. Ashby*, 294 So. 3d 445, 446 (Fla. 5th DCA 2020). Baxter argues that he voluntarily dismissed his will contest on July 29, 2020, when he withdrew all his objections to probate of the 2014 will and appointment of Glavin as personal representative. That assertion is accurate; there was no further litigation in the probate case. On August 4, 2020, letters of administration were issued, and Glavin was appointed personal representative of the estate which led to normal estate administration. Glavin’s motion to tax attorneys’ fees and costs was not filed until August 28, 2020. A voluntary dismissal divests a trial court of jurisdiction when it immediately ends the litigation. See *Dep’t of Rev. o/b/o Venzen*, 294 So. 3d 3 See, e.g., *Fl a. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1151 (Fla. 1985); *Bishop v. Est. of Rossi*, 114 So. 3d 235, 237 (Fla. 5th DCA 2013); *Simhoni v. Chambliss*, 843 So. 2d 1036, 1037 (Fla. 4th DCA 2003). 7 at 446; *Miller v. Fortune Ins. Co.*, 484 So. 2d 1221, 1223 (Fla. 1986) (“A trial judge is deprived of jurisdiction, not by the manner in which the proceeding is terminated, but by the sheer finality of the act, whether judgment, decree, order or stipulation, which concludes litigation.”). After the entry of a voluntary dismissal, a trial court’s authority to award attorney’s fees even under the inequitable conduct doctrine is limited. See *Almazan v. Est. of Aguilera-Valdez*, 273 So. 3d 9, 11 (Fla. 4th DCA 2019) (“[W]e hold that a trial court’s inherent authority to award attorney’s fees as a sanction for bad faith conduct on its own initiative does not extend beyond a voluntary dismissal.”); see also *Pomeranz & Landsman Corp. v. Mia. Marlins Baseball Club, L.P.*,

143 So. 3d 1182, 1183 (Fla. 4th DCA 2014) (noting that a trial court has jurisdiction to consider 57.105 motion for sanctions “only where the motion for sanctions was filed with the court before a voluntary dismissal”). We hold that the probate court lacked jurisdiction to entertain and rule on Glavin’s motion for attorneys’ fees and costs; thus, the final judgment awarding same is quashed. Lack of Due Process Whether a court has violated a party’s due process rights is a question of law reviewed de novo. See *Norvil v. State*, 191 So. 3d 406, 408 (Fla. 2016). Baxter points out that Glavin’s motion to tax attorneys’ fees and costs 8 relied upon statutes and rules that, under the facts of this case, provided no support for any such award against him. Given that the final judgment awarding fees and costs did not mention any of the statutes or rules relied upon in Glavin’s motion and our own analysis of same, Baxter’s point is well taken. As noted above, Glavin’s motion to tax fees and costs against Baxter did not mention sanctions, bad faith, inequitable conduct, or anything remotely related to those terms. A trial court’s inherent authority to impose attorney’s fees as a sanction for bad faith conduct is subject to due process requirements—namely notice and an opportunity to be heard, which includes the opportunity to present witnesses and other evidence. See *Moakley v. Smallwood*, 826 So. 2d 221, 227 (Fla. 2002). 4 In *Moakley*, the Florida Supreme Court quashed the trial court’s grant of attorney’s fees in part because the attorney was not provided notice and an opportunity to be heard before the imposition of attorney’s fees. *Id.*; see also *T/F Sys., Inc. v. Malt*, 814 So. 2d 511, 514 (Fla. 4th DCA 2002) (reversing award of attorney’s fees based on the inequitable conduct 4 The lack of specificity in the final judgment entered in this case also prevents any review to determine whether the probate court complied with *Moakley*’s mandate that the amount of the attorney’s fees awarded as a sanction must be directly related to the attorney’s fees and costs the moving party incurred because of the opponent’s inequitable conduct. 826 So. 2d at 227. H owever, given our holdings in this case, we need not discuss this deficiency any further. 9 doctrine where appellants were not given an adequate opportunity to present witnesses and other evidence in their defense). In *Anderson v. McDonough*, the Second District determined that the testator’s son’s grounds for contesting his father’s will, while uns uccessful, were not so meritless as to constitute bad faith. 189 So. 3d 266, 268 (Fla. 2d DCA 2016). After setting forth that holding, the court stated that it had rejected, as inapplicable, the statutory bases cited in *McDonough*’s motion for fees and noted “that Anderson was never given notice that fees were being sought as a sanction for bad faith conduct.” *Id.* We hold that providing notice mere hours before a hearing that Glavin might seek attorneys’ fees on some basis not identified in her motion, i.e., as sanctions under the inequitable conduct doctrine, does not comport with due process. Accordingly, we quash the final judgment, remand for entry of an order denying Glavin’s motion to tax attorneys’ fees and costs with prejudice, and for such other proceedings consistent with this opinion as may be appropriate to afford relief to Baxter. FINAL JUDGMENT QUASHED; and REMANDED for further proceedings consistent with this opinion. LAMBERT, C.J. and WALLIS, J., concur.

