

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21804
O/kmg

_____AD3d_____

Submitted - December 3, 2008

MARK C. DILLON, J.P.
DAVID S. RITTER
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2008-00036

DECISION & ORDER

Jane Doe, respondent, v Richard Karpf,
appellant; Kopff, Nardelli & Dopf, LLP,
nonparty-appellant.

(Index No. 1078/03)

Kopff, Nardelli & Dopf, LLP, New York, N.Y. (Martin B. Adams of counsel),
nonparty-appellant pro se, and for appellant.

Ruth E. Bernstein, New York, N.Y., for respondent.

In an action to recover damages for psychiatric malpractice, the defendant and his attorneys, Kopff, Nardelli & Dopf, LLP, appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Palmieri, J.), dated November 21, 2007, as granted that branch of the plaintiff's motion which was to impose sanctions against the defendant and to recover an award of an attorney's fee from the defendant pursuant to 22 NYCRR 130-1.1.

ORDERED that the appeal by the nonparty, Kopf, Nardelli & Dopf, LLP, is dismissed, as it is not aggrieved by the portion of the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is reversed insofar as appealed from by the defendant, on the law, with costs to the defendant, and that branch of the motion which was to impose sanctions against the defendant and to recover an award of an attorney's fee from the defendant pursuant to 22 NYCRR 130-1.1 is denied.

It is settled that sanctions under 22 NYCRR 130-1.1 are intended to limit frivolous

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and harassing behavior (*see Glenn v Annunziata*, 53 AD3d 565; *Breslaw v Breslaw*, 209 AD2d 662). Conduct is frivolous if “it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another” (22 NYCRR130-1.1[c][1],[2]; *see Glenn v Annunziata*, 53 AD3d 535, 566; *Breslaw v Breslaw*, 209 AD2d 662). In this case, the Supreme Court imposed sanctions upon the defendant for moving for a protective order. However, under the circumstances of this case, the defendant's motion was a legitimate and appropriate response to the plaintiff's attempt to obtain further discovery after she had filed her note of issue.

DILLON, J.P., RITTER, CARNI and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court