

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001146-MR

LINDA SUSAN SMITH, INDIVIDUALLY, AND
AS EXECUTRIX OF THE ESTATE OF GARY S.
SMITH, DECEASED; AND H. JOSEPH MARSHALL,
ATTORNEY AT LAW

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 90-CI-007050

MILTON F. MILLER, M.D.; GALEN OF
KENTUCKY, INC., D/B/A COLUMBIA
SUBURBAN HOSPITAL, F/K/A HUMANA OF
KENTUCKY, INC., D/B/A HUMANA HOSPITAL
SUBURBAN; HUMANA, INC.; HUMANA
HEALTH PLAN, INC.; FRANK P. DOHENY,
ATTORNEY AT LAW; W. KENNEDY SIMPSON,
ATTORNEY AT LAW; AND WILLIAM T.
ROBINSON, ATTORNEY AT LAW

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, GUIDUGLI AND PAISLEY, JUDGES.

GUIDUGLI, JUDGE. H. Joseph Marshall (hereinafter "Marshall"),
counsel for Linda Susan Smith, individually and as Executrix of
the Estate of Gary S. Smith, deceased (hereinafter collectively
"Smith") has appealed from the Jefferson Circuit Court's

February 13, 2001, April 9 and April 30, 2002, orders, regarding the imposition of Rule 11 sanctions against him. Having considered the parties' briefs,¹ the extensive record and the applicable case law, we affirm.

The impetus of the Rule 11 sanctions proceeding was a document filed by Marshall on behalf of Smith on September 11, 2000, captioned as an Amended Notice-Motion-Order and entitled "MOTION TO STAY THE DEFENDANT HUMANA OF KENTUCKY, INC., d/b/a HUMANA SUBURBAN HOSPITAL SUBSEQUENTLY KNOWN AS GALEN OF KENTUCKY, INC., d/b/a COLUMBIA SUBURBAN HOSPITAL'S, MOTION FOR A SUMMARY JUDGMENT PENDING FURTHER DISCOVERY BY THESE PLAINTIFFS INCLUDING INTENTIONAL FRAUD UPON THIS COURT BY THE DEFENDANTS." (Emphasis added.) On August 18, 2000, Galen of Kentucky, Inc., d/b/a Columbia Suburban Hospital, (hereinafter "Suburban") had filed a renewed motion for summary judgment, arguing that Smith had failed to establish any liability on the part of Suburban. The trial court had previously denied Suburban's earlier motion for summary judgment, noting that it could renew its motion once all of the depositions had been completed. Upon the filing of the renewed motion, Smith, through attorney J. Fox DeMoisey, filed a Motion to Stay Suburban's motion for summary judgment to allow for discovery. Marshall filed the amended motion a few days later. In the amended motion, he accused the Humana

¹ Galen of Kentucky, Inc., d/b/a Columbia Suburban Hospital adopted the brief filed by Humana, Inc., and Humana Health Plan, Inc.

Defendants of filing false, misleading and deceptive pleadings, of violations of the Consumer Protection Act, and of violations of various criminal statutes, including tampering with physical evidence, obstructing justice, and engaging in organized crime. On a motion by Frank Doheny, counsel for Humana, Inc., and Humana Health Plan, Inc., (hereinafter collectively "Humana"), the trial court entered an order on September 14, 2000, requiring Marshall to file a pleading specifying the facts upon which he based the September 11, 2000, motion. On October 3, 2000, Marshall filed an 87-page response with 135 exhibits, as well as a videotape. On October 22, 2000, Marshall filed a two-volume amended response, which was 200 pages long and had attached to it 179 exhibits. All of these documents were sealed pursuant to the trial court's February 13, 2001, order.

On January 29, 2001, the trial court held a hearing during which counsel for Humana argued that the response and amended response were not in compliance with the September 19, 2000, order and requested sanctions. Marshall proceeded to spend approximately ninety minutes responding, during which he indicated that he was "ashamed" that he had failed to go far enough as he had missed accusations of RICO violations and mail fraud. Marshall claimed that he had made his response in good faith, and that he had a more than ample basis for his statements.

On February 13, 2001, the trial court entered a Memorandum and Order regarding the various motions argued on January 28, 2001. In its order, the trial court sealed various documents in the record, believing that the accusations were without merit to the substantive issues in the action. The trial court further indicated that the issue of Rule 11 sanctions would be heard following the entry of a final judgment. The underlying action proceeded to trial,² where the trial court directed a verdict in favor of Humana and the jury returned a verdict in favor of Dr. Miller. After the entry of the final judgment on September 17, 2001, the trial court looked to the issue of Rule 11 sanctions. After allowing for the filing of affidavits and responses by the parties, on April 9, 2002, the trial court issued an Opinion and Order Imposing Rule 11 Sanctions solely against Marshall as follows:

This matter comes before the Court on the Motion of Defendants Milton F. Miller ("[D]r. Miller") and Humana Health Care Plan ("Humana") for the imposition of sanctions pursuant to Civil Rule 11 against the Honorable Joseph Marshall, Chief Trial Attorney for the Plaintiff ("Mr. Marshall"). A hearing was conducted January 29, 2001, regarding certain pleadings filed by Mr. Marshall, and the Court's Order of February 13, 2001, indicated that "the issue of sanctions shall be heard by the Court after a judgment has been entered." A judgment was entered on September 17, 2001, after a jury found for the Defendant [D]r. Miller

² Prior to the trial, the trial court had granted Suburban's motion for summary judgment.

and the Court granted a directed verdict for the Defendant Humana.

The matter has been fully briefed, and the Court has reviewed the record and finds that the pleadings of record filed in this case are of such a nature that sanctions pursuant to Rule 11 are warranted. It is therefore ordered that Mr. Marshall shall make a contribution of \$7,500.00 to a charitable organization(s) designated by the attorneys, tender a written apology to each attorney maligned, and complete twelve (12) hours of Continuing Legal Education in Ethics.

OPINION

This court recognizes the frustration Mr. Marshall experienced when attempting to obtain discovery from a large corporation in this complicated medical malpractice/health care provider case. His indignation at what he perceived to be the Defendants' failure to provide appropriate health care to his client is equally understandable. However long and arduous his journey, though, Mr. Marshall is not permitted to accuse parties, counsel or witnesses of unsupported criminal acts. Plaintiff attorneys generally regard themselves as the white knights of the legal profession, and while this Court agrees that the Plaintiff's bar members comprise a noble group, Mr. Marshall's membership in such esteemed company does not excuse his unwarranted accusations against counsel on behalf of his client. In order to understand Mr. Marshall's dilemma, it is worthwhile to place this case in its historical perspective.

This action was filed on August 28, 1990, alleging malpractice and failure of the health care provider to provide adequate services to its insured. The Verified Complaint filed by Mr. Marshall contained 62 allegations and, with attachments, encompassed some 148 pages. On March 27,

1991, the presiding judge, the Honorable Rebecca Westerfield, struck the Complaint and portions of an Amended Complaint as unnecessarily verbose and lacking in clarity and conciseness. The Plaintiff continued with the present action. From the case's inception Plaintiff and Defendant were in conflict on most motions.

The case proceeded rather slowly, even for a medical malpractice/contract case. A trial was scheduled in 1995 but was reassigned without objection. The then-presiding judge, the Honorable Tom Wine, designated a trial date of May 6, 1997. Just prior to trial, Mr. Marshall noted that the Honorable Tim McCall would be assisting him at trial. Humana moved that Mr. McCall not be allowed to assist because of a potential conflict. On May 1, 1997, Mr. McCall and another attorney in his offices, the Honorable Bryan Clare, were not permitted to remain on the case because of this conflict.

In the week before trial, Mr. Marshall attested that certain discovery had not been provided and requested a continuance which was denied. A day or two before trial, Mr. Marshall was admitted to the hospital, and counsel appeared for him requesting a continuance. This motion was denied, and the case was dismissed.

In motions to reconsider this action pursuant to Civil Rules 59 and 60, evidence of Mr. Marshall's illness (a herniated disk and depression) indicated that he did not enter the hospital on his own volition. The defense obtained with Court approval the medical records of Mr. Marshall (this action inspired some rancor on Mr. Marshall's part, as he felt his and his family's privacy had been violated). The motions to set aside the dismissal were subsequently overruled by Judge Wine, and the matter was taken to the Court of Appeals.

In an unreported decision, the panel held that Judge Wine had abused his discretion in dismissing the action and opined that, ". . . we reluctantly reverse the order of the Jefferson Circuit Court." The Court further stated that though it was ". . . mindful of the myriad of additional issues the trial court will have to face as a result of this reversal, we are confident that the trial court will continue control of its docket and properly **manage this case using appropriate sanctions** as needed, until the case is concluded." (Emphasis added.)

Upon return to the trial court, a recusal motion was filed but overruled by Judge Wine; however, on August 23, 2000, the Judge *sua sponte* recused himself, and the case was reallocated to this Court pursuant to the local rules. It was with this background and the thought of possible vindication by the Court of Appeals that Mr. Marshall filed a Motion to Hold in Abeyance his Response to a Motion for Summary Judgment filed by then-Defendant Galen of Kentucky, Inc., d/b/a Humana Hospital Suburban ("Suburban"). It was this Response and subsequent pleadings that led to this Court's consideration of sanctions based on Rule 11 violations.

Mr. Marshall's Motion to Hold in Abeyance was summarily denied by this Court, as it closely resembled a Motion for Summary Judgment filed by Suburban in 1997. At that time, Judge Wine denied this dispositive motion because he felt it was untimely filed. Unfortunately, Mr. Marshall's Motion to Hold in Abeyance pleaded that the Defendants had filed false, misleading, and deceptive pleadings and had provided false information to this Court. He accused the Honorable William T. Robinson (Counsel for Suburban) of obstruction of justice and further claimed that Mr. Robinson had been "aided and abetted by the Honorable Frank P. Doheny." Mr. Marshall then cited corporate liability under the penal code. Mr.

Marshall also accused the Defendants of violating the Kentucky Consumer Protection Act (KRS 367.170). Throughout the motion, Mr. Marshall indicated that Counsel had deceived the Court through false, misleading and deceptive practices. He even accused Counsel of the criminal offense of Tampering with Physical Evidence by claiming they fabricated statements and information included in the official record. He opined and inferred in his pleadings that the Defendants were involved in a Criminal Conspiracy (KRS 506.040) in that they collectively filed false information, and, therefore, were engaged in organized crime (KRS 506.120). Mr. Marshall launched into a diatribe against Humana Corporate officials who had entered guilty pleas to criminal charges in the past, and he inferred that such past behavior was indicative of current criminal behavior in this case. He asserted that false entries were made in the Court's stepping dockets, and he maintained Defendants were responsible for the disappearance of some taped proceedings which impugned the Defendants.

Mr. Marshall railed against his adversaries, referring to them as "corporate, pin striped legal technicians, one of which hides behind having formerly held the highest position in our Kentucky Bar Association, that of the Presidency," an apparent reference to Mr. Robinson, a former President of the KBA. He cited cases which were clearly without this Court's jurisdiction when he stated, "Courts across the land have so indicated with verdict after verdict against Humana." In short, Mr. Marshall's pleadings in support of his Motion to Hold in Abeyance were extraneous and completely without merit and substance. The Court and the Defendants were taken aback by these pleadings.

The following dialogue between Mr. Marshall and the Court, in the presence of defense counsel, occurred at the call of the

Court's regular motion hour on September 18, 2000:

Court: ". . . and you know, you've gone the whole gamut here, which is rather serious pleadings to make without supporting material. I'd just as soon that type of motion be withdrawn until at least I get a chance to sit in here and find out what's going on in the case . . . But I don't like these pleadings that are filed that are saying they've got some sort of conspiracy to defraud this Plaintiff."

Marshall: "Judge, it's not the Plaintiff. My pleadings indicated fraud on the Court."

Court: "Well, that's even more serious. But I don't want to get bogged down in extraneous material . . . But if you're serious about going through with this, then I think you've got to document something by way of affidavit form within ten days like Mr. Doheny suggested. I don't want to delay the trial."

After discussing the matter, Mr. Marshall suggested that after the Court saw his proposed documentation in support of his allegations that the Court should submit the matter to the Grand Jury. The Court refused, stating, "If you've got a complaint, then take it to the Commonwealth's Attorney." The Court added, "One problem I had when I read the motion was that I thought we're being sidetracked on some side issue that has nothing to do with the case. Now you think it has

everything to do with it, you want to keep these pleadings in this file, then go ahead. But I don't know what allegations such as these have in this trial . . ." During this discussion, Mr. Marshall indicated that "part of this obstruction [of justice] is that the Court has repeatedly, repeatedly, repeatedly, repeatedly been misled." The Court then allowed Mr. Marshall fifteen days to respond or withdraw the Motion.

Mr. Marshall did respond, and, unfortunately, a pleading which simply could have been withdrawn mushroomed into an 87-page response containing 90 exhibits (constituting over 200 pages) and a videotape of several days of news broadcasts. This was supplemented by a 200-page response on October 22. These responses may only be described as the Plaintiff's rambling historical perspective of the case; a typical remark included the notion that, "It was not unlike a magician show, in the Court, with Humana Defendants. I point to Humana, Inc. Then Humana defense counsel rise to their feet and twist, just as the mirrors that conceal an elephant for the magician while the audience is distracted." (p. 9, Response 10-30-00).

The Court was especially perturbed by the rambling nature of this Motion because it specifically defied the Court's Order of September 19, 2000, which required the Plaintiff to plead "with specificity the facts on which the Plaintiff bases the motion filed." The Court received nothing more than volumes of conclusory material concerning situations easily explainable by the Defendants, who responded with not-quite-equal, yet still voluminous, memoranda. Their responses, of course, required the Plaintiff to reply in turn, and unfortunately for the parties and this Court, these allegations and their responses did sidetrack the Court from the main issues before it, including the renewed Motion for Summary Judgment filed by Suburban.

Prior to the January hearing, this Court reviewed the Motions and Responses and conducted a hearing on the allegations of misconduct. Mr. Marshall failed to satisfy the Court in both his pleadings and in his arguments. At the conclusion of the January 29, 2001, hearing, this Court attempted to clarify its position with Mr. Marshall: "Of course you know I drafted an order asking you to be more specific, and if that's specificity, then I'd like to know what" At this point Mr. Marshall interrupted the Court, stating that the Court had asked him to "substantiate the allegations." (p. 103-104, Lines 23-25, 1-2). The Court now finds that Mr. Marshall was neither specific nor did he substantiate any of his allegations of misconduct.

In fact, each of Mr. Marshall's allegations [was] shown to bespeak absolutely no wrongdoing on behalf of the defendants or their attorneys. At the conclusion of the hearing, the Court noted that it would submit the issues of "sanctions being imposed and to exclude these latest pleadings from the record." (p. 105, Lines 5-6). The Court issued an order on February 13, 2001, noting that the issue of sanctions pursuant to Rule 11 would be heard by the Court after a judgment was entered, and the Court sealed the documents from public view.

Mr. Marshall has been heard relative to the allegations he made. His memorandum of law in his response to the motion for Rule 11 sanctions attempts to defend his indefensible actions by pointing to the very documents that this Court previously waded through, as if they can credibly prove that the Defendants and their attorneys indeed committed such criminal offenses as obstructing justice, tampering with evidence, engaging in criminal conspiracy, and making false entries in a Court record.

In order to fully recognize how absurd these allegations are, one need only examine Mr. Marshall's filed responses showing his illogical explanations for his paranoid beliefs. For instance, Mr. Marshall accused Mr. Simpson, attorney for Dr. Miller, of altering records. He bases the accusation on the fact that at Dr. Miller's deposition, the original medical file submitted contained fewer pages than the copy provided Mr. Marshall by Mr. Simpson. The explanation for this minor discrepancy? The Court Reporter combined the pages when copying the file, as opposed to Mr. Simpson's method of copying each page separately.

Mr. Marshall claimed Suburban made a "material misrepresentation" to this Court as to the "title" of the hospital; he claimed that the hospital was not in the chain of title. The explanation for this fallacy? The same Deed Book contained the hospital in a chain of title executed ten days earlier than what Mr. Marshall examined.

In the Court's view, however, the most egregious allegation was Mr. Marshall's accusation that the Defendants somehow managed to obtain or tamper with taped proceedings conducted in Division 10, and because there were (or are) missing tapes, somehow the Defendants committed a criminal act. Mr. Marshall never pointed to exactly which tapes were missing in order for the Court to make a detailed inquiry, but simply maintained that as the tapes are missing, then the Defendants acting together must have been involved in their disappearance.

Isn't it quite clear that an attorney cannot make groundless accusations on behalf of a client which, in effect, bring the entire bar and judiciary into disrepute? Do these baseless pleadings actually assist the Plaintiff, or do they merely reinforce the belief by laypersons that all attorneys are

crooked and went to bending the law at every turn to win? Does Mr. Marshall have no shame!

Rule 11 provides that "every pleading, motion" signed by an attorney is a certification "that to the best of his knowledge, formed after reasonable inquiry it is well founded in fact." This Court finds that Mr. Marshall made neither a reasonable inquiry nor was any of his allegations founded in fact. The Court previously instructed Mr. Marshall at the September 18 hearing that if he had any foundation in fact for his complaints, then the matter should be turned over to the Commonwealth Attorney's offices. In truth, Mr. Marshall provided no facts, but only a spurious motion that placed the legal profession in disrepute. It saddens this Court to believe that an attorney would fail to fully investigate his suspicions and instead resort to making false accusations of criminal conspiracy against his colleagues.

Other Courts have faced similar situations. As noted in Thomason v. Lehrer, 182 F.R.D. 121, 1998 U.S. Dist. LEXIS 19480, "[t]he circumstances of this case, however, present the unhappy picture of a lawyer who has crossed the boundary of legitimate advocacy into personal recrimination against his adversary. Lawyers are not free, like loose cannons, to fire at will upon any target of opportunity which appears on the legal landscape. The practice of law is not and cannot be a 'free fire zone.'"

In this case, Mr. Marshall's animosity toward the defendants and their counsel transformed zealous advocacy of elevated principles into needless consumption of Court time at the expense of obtaining relevant information, obtaining new witnesses, and filing timely disclosures of same (e.g., prior to the trial in August of 2001, this Court felt compelled to deny a

last-minute expert witness disclosure because of the untimeliness of the disclosure). The purpose of Rule 11 is to "curb abusive conduct in the litigation process," and is intended for "exceptional circumstances." Clark Equipment Co., Inc. v. Bowman, Ky.App., 762 S.W.2d 417, 420 (1988)(citations omitted). While there have been several requests for Rule 11 sanctions in this Division, the Court has long recognized that only when "exceptional" violations occur will they be imposed.

Truly, Mr. Marshall's pleadings fall within that category. Mr. Marshall believes that he has zealously represented his client, and "Rule 11 cannot be allowed to thoroughly undermine zealous advocacy." Brown v. Federation of State Medical Bds., 7th Cir., 830 F.2d 1429, 1435 (1987)(p. 12 of Response). Sadly, what he fails to realize is that one does not so advocate by categorizing one's opponents as thieves, criminal conspirators, and committers of fraudulent acts. Mr. Marshall missed the mark when he made these allegations solely due to his inability to obtain discovery. Our Rules provide for remedies to compel discovery requests; for those who fail to comply, the matter can be reviewed by another Court. To utilize other sinister methods makes a mockery of our legal system and belittles what we consider a grand and noble profession.

SANCTIONS

It is obvious to this Court that any sanctions imposed are inherent with the Court, which has a great deal of discretion. Rule 11 provides the Court, when considering sanctions, ". . . shall impose upon the person who signed it, an appropriate sanction, which may include an order to pay the other . . . parties the amount of reasonable expenses incurred because of the filing of the . . . motion . . . including a reasonable attorney's fee." The Court is

loathe to resort to the imposition of sanctions, as it has come to expect the highest professional standards from the practitioners before it; however, in this case the Court has no other recourse but to do so.

The groundless attack on these three attorneys and the defendant parties leads the Court to consider that attorney fees would be of little solace to the attorneys or the parties to this action. The question before this Court is whether this would indeed be an "appropriate sanction;" the Court believes otherwise. While at first blush it would appear appropriate to award attorney's fees in view of the amount of work done in responding to Mr. Marshall's motions, this Court has decided that such an award would merely constitute reimbursement of the parties to this action. The gravamen of the pleadings was the attack on the attorneys representing the parties, and in the truest sense, this is an injury for which no real compensation exists. Similarly, because the Court sealed that part of the record concerning these pleadings, it would be inappropriate to award compensation for damages to reputation or for the egregious nature of the allegations, as one of the defense attorneys proposes.

In imposing sanctions, this Court is well aware of possible mitigating circumstances, such as Mr. Marshall's illness and his inability to practice law to the fullest extent possible. Therefore, the Court will order that Mr. Marshall attend twelve (12) hours of Continuing Legal Education in Ethics within two (2) years of June 1, 2002; tender a written letter of apology to the three attorneys involved; and make a contribution of \$7,500.00 to a charity(ies) designated by the attorneys to be paid within one (1) year of said designation, or show cause why he should not

be held in contempt for failure to comply with this order.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED:

1. Mr. Marshall shall attend twelve (12) hours of Continuing Legal Education in Ethics within two (2) years of June 1, 2002;
2. Mr. Marshall shall send a written letter of apology to the three attorneys involved with a copy to the Court file within 60 days;
3. Mr. Marshall shall contribute \$7,500.00 to a charitable organization(s) designated by the attorneys in this action within one (1) year of said designation. A copy or copies of the contributions and designation shall be made a part of the record of this action.

Marshall's subsequent CR 52 motion to amend was summarily denied on April 30, 2002, and this appeal followed.

On appeal, Marshall argues that he was entitled to conduct discovery on the Rule 11 matters, that he did not violate Rule 11, and that he made a reasonable inquiry prior to making his allegations. On the other hand, Humana argues that Marshall's belief regarding criminal activity of either the parties or their counsel was not reasonable, that the Motion to Stay was only filed to unnecessarily delay the proceedings, that Marshall was not entitled to conduct discovery on the Rule 11 matters, and that the sanction imposed must stand as Marshall

did not raise any issue in his brief as to its amount or requirements. Milton F. Miller, M.D., (hereinafter "Dr. Miller") makes similar arguments, and avers that under either Kentucky's or the United States Supreme Court's standard, the trial court's imposition of sanctions must stand. We agree with Humana and Dr. Miller.

Under Kentucky's Civil Rules, CR 11 states, in relevant part, that:

The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The Kentucky Court of Appeals addressed the issue of Rule 11 sanctions in Clark Equipment Company, Inc., v. Bowman, Ky.App., 762 S.W.2d 417 (1988), holding that the "test to be used by the trial court in considering a motion for sanctions is

whether the attorney's conduct, at the time he or she signed the allegedly offending pleading or motion, was reasonable under the circumstances." Id. at 420. The Court went on to set out the standard of review both where sanctions were denied and where they were granted. In situations where sanctions were denied, the standard of review is whether the trial court abused its discretion. In situations where sanctions were granted, as in the case now before us, Clark set out a multi-standard approach: "a clearly erroneous standard to the trial court's findings in support of sanctions, a *de novo* review of the legal conclusion that a violation occurred, and an abuse of discretion standard on the type and/or amount of sanctions imposed." Id. at 421.

Two years after we rendered our decision in Clark, the United States Supreme Court rejected a three-tiered standard of review in Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 L.Ed.2d 359, 110 S.Ct. 2447 (1990), holding that "an appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's Rule 11 determination. A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Id. at 405. The Supreme Court opted to review the imposition of Rule 11 sanctions under a deferential standard as "the district court is better situated than the court of appeals to marshal the pertinent facts and

apply the fact-dependent legal standard mandated by Rule 11.”
Id. at 402. Many federal district and appellate courts,
including the Sixth Circuit Court of Appeals, as well as many
state courts have followed this holding.

We have reviewed the record, including the volumes of
sealed records, and have determined that under either the multi-
standard approach or the abuse of discretion standard, the trial
court’s imposition of Rule 11 sanctions must be upheld. The
record clearly supports the trial court’s findings that Marshall
did not have a reasonable basis to make the allegations he did
and that he did not conduct a reasonable inquiry before filing
his motion as he should have done pursuant to CR 11. The trial
did not commit any error in its findings or in its conclusions
that violations occurred and that sanctions were appropriate.
We need not address the amount or form of the sanctions imposed
as Marshall did not raise this issue in his brief.³

Furthermore, we agree with Humana and Dr. Miller that
Marshall was not entitled to conduct additional discovery to
“flesh out the matters in his Motion . . . and Amended
Response.” Pursuant to Clark Equipment, the attorney’s conduct
must be reasonable “at the time he or she signed the allegedly
offending pleading or motion.” Clark Equipment, 762 S.W.2d at
420. Additional discovery regarding the allegations conducted

³ We note that in his prehearing statement, Marshall listed an issue as to
whether the trial court imposed inappropriately harsh and excessive
sanctions, but the issue was not argued in his brief.

after the filing of the Motion to Stay could by definition not have aided the trial court in determining whether Marshall's conduct was reasonable when he signed the motion.

For the foregoing reasons, the Jefferson Circuit Court's orders regarding the imposition of Rule 11 sanctions against Marshall are affirmed.

ALL CONCUR.

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