IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellant,

v.

MICHAEL MURPHY,
Defendant-Appellee,

ELIZABETH WEINTRAUB,
Intervenor-Appellant.

Supreme Court No. 2017-SCC-0027-CRM
Superior Court No. 16-0160

SLIP OPINION

Cite as: 2018 MP 16
Decided December 31, 2018

Robert Charles Lee, Assistant Attorney General, Office of the Attorney General, Saipan, MP for Intervenor/Appellant.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

INOS, J.:

¶ 1 Appellant-Intervenor former Assistant Attorney General for the Commonwealth of the Northern Mariana Islands ("Commonwealth") Elizabeth Weintraub ("Weintraub") seeks to vacate the imposition of monetary sanctions against her for lack of diligence and dilatory tactics in prosecuting a sexual abuse case. First, she asserts the trial court abused its discretion by imposing sanctions without making a determination of bad faith, considering her ability to pay a monetary fine, or supporting its findings of Model Rules of Professional Conduct ("model rules") violations with clear and convincing evidence. Second, Weintraub argues the sanction violated her due process rights in that she was not afforded heightened due process, sufficient notice of the charges against her, or a right to counsel. She also asserts due process violations in failing to make a finding of bad faith, not considering her ability to pay the fine, and relying on law that conflicts with United States Supreme Court precedent. For the following reasons, we VACATE the sanction.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The facts of this appeal arise from Weintraub's representation of the Commonwealth against Michael Murphy ("Defendant") who was facing allegations of sexual abuse of a minor. The Commonwealth filed charges on August 25, 2016, and the case was scheduled for a jury trial February 13, 2017. The court then continued[1] the trial to April 3, 2017 to accommodate Weintraub's coaching schedule with a high school mock trial competition.

¶ 3 At a pretrial conference on February 28, 2017, the Commonwealth requested another trial continuance to allow for DNA forensic testing of an article of the victim's clothes. Weintraub explained that when the physical evidence was collected, no stains were visible because the clothing was in a non-porous bag. She also explained the clothing was not initially sent for DNA testing because the original allegations in the case involved only digital penetration and did not suggest the presence of Defendant's bodily fluid on the clothing. However, on February 1, 2017, "[w]hen counsel for both parties went to inspect the clothing items in evidence . . . multiple stains were apparent." *Commonwealth v. Murphy*, No. 16-0160 (NMI Super. Ct. Mar. 10, 2017) (Mem. in Supp. of the Commonwealth's Mot. to Continue Trial & Extend the Time to Respond to Def.'s Mot. at 2). "After viewing these items, the Commonwealth immediately took steps to process the items for evidence, including obtaining and executing a search warrant for the [d]efendant's DNA, obtaining buccal swabs from the victim, and shipping all of the physical evidence to the lab using expedited shipping methods." *Id.* A few days later,

[1] Defendant did not oppose the Commonwealth's motion to continue the jury trial.

the DNA lab notified Weintraub that the Commonwealth Department of Public Safety must first pay off all its outstanding debt with the lab before expediting the test and could not provide a report until late August 2017. The Commonwealth also needed additional time to consult its forensic psychiatrist whose specialized knowledge was needed to prepare the child victim for trial without further victimizing the child. It also needed to retain an additional expert in the field of child forensic interviewing to respond to Defendant's motion requesting a competency hearing and to exclude the victim's testimony based on "taint." Over Defendant's objections, the court continued the trial to September 11, 2017 and set a new discovery deadline of July 26, 2017.

¶ 4 However, on July 7, 2017, the Commonwealth moved to extend the discovery deadline to allow its forensic psychiatrist to complete the evaluation and report. In addition, on June 30, 2017, the lab testing the DNA notified the Commonwealth that it recently discovered male DNA on the interior area of the victim's clothing and needed until late August to complete its report. The court denied extending the discovery deadline. At a status conference, the Commonwealth moved for reconsideration to extend the discovery deadline which the court did not grant.

¶ 5 The Commonwealth subsequently moved to voluntarily dismiss the charges against Defendant. Weintraub explained the Commonwealth "must dismiss the charges . . . because the lab did not finish processing the forensic evidence . . . until nine days after the [c]ourt's discovery deadline had passed." *Commonwealth v. Murphy*, No. 16-0160 (NMI Super. Ct. Aug. 9, 2017) (Notice of Voluntary Dismiss. Without Prejudice at 1). She further asserted that without the victim's testimony or key forensic evidence, the Commonwealth would be unable to prove its case.

¶ 6 In granting the voluntary dismissal, the court toiled between the "tremendous amount of resources . . . expended in the prosecution and defense of this matter, including thousands of wasted taxpayer dollars[,]" and the prosecution's "inability to prove its case at trial." *Commonwealth v. Murphy*, No. 16-0160 (NMI Super. Ct. Aug. 15, 2017) (Order Granting Commonwealth's Rule 48(a) Mot. to Dismiss Without Prejudice at 6–7) ("Rule 48 Order"). Ultimately, the court dismissed the case because "insufficient evidence warrants great weight in considering a . . . motion to dismiss." *Id.* at 7. The court expressed discontent with the manner in which the Commonwealth handled the case. The court also addressed Defendant's motion to dismiss the case with prejudice where he claimed Weintraub committed prosecutorial misconduct. In denying the motion, the court clarified Weintraub's actions did not equate to bad faith. The court found that a sanction was appropriate and ordered Weintraub to show cause why she should not be sanctioned for lack for diligence and dilatory tactics.

¶ 7 Following a hearing, the court imposed a $500.00 monetary sanction, ordering Weintraub to remit payment to a non-profit organization on Saipan dedicated to helping sexually abused children. *See Commonwealth v. Murphy*,

No. 16-0160-CR (NMI Super. Ct. Sept. 6, 2017) (Order Imposing Sanctions on Assist. Att'y Gen. for Cum. Violations of Model Rules Prof'l Cond. at 1) ("Sanctions Order"). The Sanctions Order examined Weintraub's competence and diligence, considered the pace in which she litigated the case, expressed concerns with her inefficient case management, lack of preparation, and waste of resources, and noted its concern that she failed to understand the gravity of sexual assault charges. Specifically, the Sanctions Order highlighted the numerous continuances and lack of thoroughness to justify imposing sanctions. Weintraub timely appeals.

II. JURISDICTION

¶ 8 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3. We also have jurisdiction to regulate attorney conduct. *See* NMI CONST. art. IV, § 9(a).

III. STANDARDS OF REVIEW

¶ 9 There are two issues on appeal. First, we consider whether the trial court abused its discretion by imposing a sanction. We review a court's decision to impose sanctions, and the appropriateness of such sanctions, for abuse of discretion. *See Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 3. Second, we consider whether the court violated Weintraub's due process rights in imposing sanctions. We review alleged due process violations de novo. *Id*.

IV. DISCUSSION

¶ 10 Weintraub argues the trial court abused its discretion by imposing sanctions under its inherent authority absent a finding of bad faith. She also alleges the court abused its discretion by failing to determine violations of the model rules with clear and convincing evidence. Lastly, Weintraub asserts the court abused its discretion by imposing monetary sanctions without considering her ability to pay.

¶ 11 We review claims of improper imposition of sanctions for abuse of discretion. *Matsunaga,* 2001 MP 11 ¶ 3. "An abuse of discretion exists if the court base[s] its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Commonwealth v. Taitano*, 2017 MP 19 ¶ 35 (citation omitted).

¶ 12 In general, a "trial court should not exercise its inherent power to assess monetary sanctions against counsel absent grossly negligent, reckless, or willful conduct." *Commonwealth v. Borja*, 3 NMI 156, 175 (1992). When an attorney is sanctioned for conduct related to his or her role as an advocate for his or her client, the court must make a determination that the attorney acted with bad faith. *Matsunaga*, 2001 MP 11 ¶ 23 ("[W]e insist upon bad faith as a prerequisite to the award of sanctions for conduct normally related to the pursuit of litigation because it ensures that restraint is properly exercised, and it preserves the balance between protecting the court's integrity and encouraging meritorious arguments." (citations and internal quotation marks omitted)). On the other hand, we do not require a finding of bad faith when courts use its

inherent power to sanction attorneys who are not acting in the normal course of litigation. For instance, when attorneys lie to the court or engage in unprofessional or unethical conduct, which is not done for the benefit of a client, finding bad faith prior to imposing sanctions is not needed. *Id.* ¶ 24.

¶ 13 Conduct occurring in the normal course of litigation or for the benefit of a client includes trial preparation or lack thereof, filing motions, conducting direct and cross examination of witnesses, and delivering closing arguments. *Compare Sonoda v. Villagomez*, 3 NMI 535, 544 (1993) (lack of trial preparation) *with United States v. Seltzer*, 227 F.3d 36, 38 (2d Cir. 2000) (attorney tardiness unrelated to attorney's representation of client).[2] In *Sonoda*, we noted that unless the court found the attorney acted with bad faith, imposing sanctions for his failure to prepare defendants for trial or request a continuance would be improper. 3 NMI at 544.

¶ 14 Bad faith encompasses a wide array of unwanted conduct and can include committing fraud upon the court, delaying litigation, willfully disobeying a court order, or presenting frivolous, meritless arguments. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) (bad faith encompasses delaying or disrupting litigation or hampering enforcement of a court order); *and compare Borja*, 3 NMI at 172 (questionable conduct undertaken willfully or recklessly) *with Zambrano v. City of Tustin*, 885 F.2d 1473, 1484 (9th Cir. 1989) (failing to obtain district bar admission was not bad faith but rather inadvertence or negligence). In essence, bad faith is intentional unprofessional conduct and/or unethical conduct.

¶ 15 Our reasoning in *Matsunaga* is illustrative. There, we considered in part whether the court abused its discretion when it sanctioned attorneys for failing to comply with the court's order. *Matsunaga*, 2001 MP 11 ¶ 3. The court found the attorneys violated various model rules and imposed sanctions for such conduct. We recognized trial courts' inherent power and duty to regulate the practice of law, "both in and out of court[,]" *id.* ¶ 19 ("A court may rely upon its inherent power to regulate the conduct of lawyers appearing before it, moreover, even when specific statutes and rules regulation the conduct are in place"), and specified courts must make a finding of bad faith to use its inherent authority to punish attorney misconduct if the conduct occurs in the normal course of litigation. *Id.* ¶ 23. Because the attorneys' conduct in *Matsunaga* was not in the normal course of litigation, but rather "unprofessional and unethical conduct that [was] not undertaken for the client's benefit[,]" the court did not need to make a finding of bad faith to impose sanctions. *Id.* ¶ 24.

¶ 16 Here, we must first determine what authority the court employed to sanction Weintraub. In the Sanctions Order the court noted "Commonwealth courts have the inherent power and duty to regulate the practice of law . . . ." Sanctions Order at 5. It continued, "[u]nder its inherent power to control case management, and to regulate the practice of law both in and out of courts, the

[2] This list is not exhaustive.

trial court may consider a range of appropriate sanctions, where . . . litigants or attorneys engage in dilatory conduct." *Id*. at 8 (citation and internal quotation marks omitted). It further cited *Atalig et al. v. Commonwealth Superior Court*, 2008 MP 19 ¶ 24, and *Saipan Lau Lau Dev., Inc. v. San Nicolas*, 2001 MP 2 ¶ 37, supporting its contention that trial courts have inherent authority to impose sanctions to maintain order and dignity of their court. Based on the foregoing passages, we are convinced the court relied on its inherent authority in sanctioning Weintraub.

¶ 17 We next determine whether the court imposed the sanction for conduct occurring in the normal course of litigation or for the benefit of her client. The court notably took issue with Weintraub's inefficient case management, lack of preparation, and waste of resources. It was particularly dismayed by the multiple continuances and Weintraub's inability to meet the extended discovery deadline. The court found to further extend the discovery deadline would prejudice the Defendant. *See* Sanctions Order at 3. We find such conduct falls in the normal course of litigation and is done for the benefit of the victim. *Compare Sonoda*, 3 NMI at 544 (lack of preparation) *with Matsunaga*, 2001 MP 11 ¶ 21 (lying to the court is not conduct done for the benefit of a client). Like *Sonoda* where the conduct at issue included failing to prepare defendants for trial and requesting a continuance, here, the of lack of preparation and requests for numerous continuances were done in the normal course of litigation. Moreover, unlike the attorneys in *Matsunaga*, Weintraub did not lie or attempt to deceive the court. While the court may disagree with Weintraub's conduct, her actions were nonetheless done on behalf of the Commonwealth.

¶ 18 Because the court sanctioned Weintraub for conduct done in the normal course of litigation or for the benefit of the Commonwealth, we need to determine whether there was a finding of bad faith. *Matsunaga* 2001 MP 11 ¶ 23. The court specifically noted that "[w]hile [it] sympathizes for all victims of sexual abuse cases, alleged or otherwise, [Weintraub]'s motives are irrelevant as she has a duty to advocate within the confines of professional ethics." Sanctions Order at 12. The court was incorrect. Since it sanctioned Weintraub for conduct done in the normal course of litigation via its inherent authority, her motives are paramount; the court was required to find that Weintraub acted with bad faith. Here, the trial court determined that Weintraub's conduct, although disagreeable, was not tantamount to bad faith. Rule 48 Order at 9. It reasoned, "the [c]ourt cannot draw the conclusion that the mere intention to re-file charges necessarily equates to bad faith, especially when coupled with insufficient evidence to proceed to trial." *Id.* The court's view of the law was clearly erroneous as it imposed the sanction although it could not, and did not find, Weintraub acted with bad faith. Therefore, we find the court abused its discretion and vacate the sanction.

¶ 19 Our holding that the court abused its discretion is sufficient to adjudicate the case before us. We therefore exercise judicial restraint and "leave [the remaining] important but ancillary issues for future consideration." *Elameto v.*

Commonwealth, 2018 MP 15 ¶ 25 (citations omitted).

V. CONCLUSION

¶ 20 For the aforementioned reasons, we find the trial court abused its discretion in imposing a monetary sanction despite its determination that Weintraub did not act in bad faith. The sanction is hereby VACATED.

SO ORDERED this 31st day of December, 2018.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

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JUDGMENT

Intervenor-Appellant Elizabeth Weintraub appeals the imposition of a monetary sanction. For the reasons stated in the accompanying opinion, the Supreme Court VACATES the sanction.

ENTERED this 31st day of December, 2018.

/s/
NORA V. BORJA
Acting Clerk of the Supreme Court