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IN THE

Supreme Court of Virginia

RECORD NO. 161640

THE ROBERT AND BERTHA ROBINSON FAMILY, LLC,

Appellant,

v.

DOUGLAS O. ALLEN, *et al*.,

Appellees.

BRIEF OF APPELLEES

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I. STATEMENT OF THE CASE

This case arises out of an appeal to the Warren County Circuit Court of a case from the Warren County General District Court. Appellant requested to withdraw its claim less than two weeks before trial in the Circuit Court while Appellees had a counterclaim and motion for sanctions pending and were prepared to proceed with the trial. Appellees gave their consent to withdrawal of Appellant's claim with agreement between the parties that Appellees' duly pending counterclaim and request for sanctions would be given consideration by the circuit court. This case concerns the inclusion of related claims when a general district court judgment is appealed to the circuit court by one party and the rendering of judgment on those claims as part of concluding the case. This case also concerns the appropriateness of awards of sanctions for frivolous claims and the standard by which such sanctions should be awarded.

II. STATEMENT OF FACTS

In approximately 2000, Appellees, Douglas and Deborah Allen (the "Allens") began leasing certain commercial real estate located in the Town of Front Royal, Warren County, Virginia, from Robert C. Robinson and Bertha J. Robinson (the "Robinsons"), the purported predecessor in interest to Appellant, Robert and Bertha Robinson Family, LLC ("Robinson LLC") as

landlord under the lease. The Allens and the Robinsons executed a written lease agreement in February 2005 (Joint Appendix ("JA"), 9-26) (the "2005 Lease"). By its terms, the 2005 Lease expired on January 14, 2010; however, the Allens occupied the premises with the verbal agreement of the Robinsons (but without written extension of the 2005 Lease) until approximately January 2014.

During the Allens' occupancy of the premises, despite the existence of the 2005 Lease, the Robinsons/Robinson LLC and the Allens proceeded to agree orally to a number of different terms.[1] The automatic rental increases provided in Section 3(b) of the 2005 Lease were disregarded; instead, the Allens paid the rental increases as often as such increases were communicated to them by the Robinsons, all of which were accepted by the Robinsons with no demand made for additional increases and no notice that such payments were being accepted with reservation. Additionally, upon the expiration of the 2005 Lease in January 2010, the provisions in Section 41(b) automatically treating the Allens as holdover tenants owing double rent were disregarded; instead, the Allens continued to pay the Robinsons the rental amount they demanded with the increases as the Robinsons informed them of the same.

[1] A fact acknowledged by Judge W. Dale Houff in his decision in the General District Court case (JA, 90-92).

Toward the conclusion of the Allens' occupancy of the premises, in approximately December 2013, the Allens began work to restore the premises to their pre-occupancy condition. In approximately January 2014, the Allens and the Robinsons/Robinson LLC reviewed the condition of the premises and agreed that the Robinsons would accept the premises in their then-current condition, with many of the Allens' improvements still present for the benefit of future tenants. The Allens were prepared to perform the remainder of the work to restore the premises to their pre-occupancy condition but ceased this work upon request from the Robinsons/Robinson LLC. The Allens and the Robinsons went their separate ways without any further communication regarding the lease.

On or about July 2, 2015, Robinson LLC filed suit against the Allens in the Warren County General District Court (Case No. GV15001467-00) seeking the sum of $25,000.00 for alleged unpaid rent and damage to the premises (JA, 68). Robinson LLC elected to nonsuit this case on August 7, 2015.

On or about September 18, 2015, Robinson LLC again filed suit against the Allens in the Warren County General District Court (Case No. GV15002039-00) for the same amounts and claims made in the prior case

(JA, 5-6). The Allens filed a counterclaim[2] seeking the security deposit of $2,600.00 that they alleged was not returned to them at the conclusion of their tenancy (JA, 52-57).

At the trial on December 18, 2015, the General District Court received evidence and testimony on Robinson LLC's claim and on the Allens' counterclaim, including testimony from all parties and witnesses with knowledge of the interactions between the parties at the conclusion of the Allens' tenancy. After the hearing, Judge W. Dale Houff issued a letter opinion dated December 30, 2015 (JA, 90-92), ruling in the Allens' favor on Robinson LLC's claim, concluding, based on the parties' conduct in January 2014 and thereafter, that Robinson LLC was not entitled to recover any amount from the Allens. Judge Houff also ruled in favor of Robinson LLC on the Allens' counterclaim.

On or about January 11, 2016, Robinson LLC noted its appeal to the Trial Court (JA, 3-4). By Pretrial Order entered March 28, 2016 (JA, 93-97), the Trial Court set the case for trial on June 8, 2016 and established deadlines for discovery. Based on the lack of documentary evidence produced in the General District Court, on or about April 15, 2016, Appellee

[2] This counterclaim was docketed by the Warren County General District Court as Case No. GV15002745-00; however, the cases were heard together at the December 18, 2015 trial and a final decision was rendered on both claims together (JA, 90-92).

Douglas O. Allen propounded his First Set of Interrogatories and First Set of Requests for Production to Robinson LLC (JA, 119-140) (collectively, the "Discovery Requests"). Robinson LLC failed to provide responses to the Discovery Requests by the deadline or by a courtesy extension granted by the Allens, despite the Allens' good faith efforts to secure responses to the Discovery Requests. As a result, the Allens filed a Motion to Exclude Evidence and Motion for Sanctions on or about May 19, 2016 (JA, 115-144).

The Allens fully complied with all pretrial orders and deadlines established by the Trial Court, including responding to Robinson LLC's discovery requests timely, filing Lists of Exhibits and Witnesses timely (JA, 145-149), and causing subpoenas to be issued in connection with the trial commanding the presence of witnesses to corroborate their arguments (JA, 98-114, 158-163).

On or about May 19, 2016, Robinson LLC filed a Motion to Dismiss the Allens' Counterclaim, arguing that the Allens did not note their appeal or post an appeal bond and that, as a result, the Counterclaim was not properly before the Trial Court (JA, 150-157). In response, on or about June 1, 2016, the Allens filed their Opposition to this Motion (JA, 170-175), arguing, based on case law from several Virginia trial courts, that Robinson

LLC's appeal brought the Allens' claim before the Trial Court even though the Allens did not specifically note their appeal of the General District Court's decision on their Counterclaim.

On or about May 27, 2016, Robinson LLC filed a Motion to Withdraw Appeal, citing the ill health of Robinson LLC's Manager, Robert C. Robinson, and Robinson LLC's general inability to continue with the litigation as sufficient grounds to permit Robinson LLC to withdraw its claim (JA, 164-170). In response, on or about June 1, 2016, the Allens filed their Objection to the Motion to Withdraw Appeal and their own Motion for Sanctions against Robinson LLC (JA, 176-189). In this Objection, the Allens provided the Trial Court with the full history of this matter and the dispute between the parties. The Allens argued, based on the relevant statutes, that Robinson LLC could not withdraw its appeal without consideration of their counterclaim and Motions for Sanctions. The Allens further argued for sanctions against Robinson LLC in the amount of the attorney's fees they had been forced to expend to defend against Robinson LLC's multiple frivolous lawsuits. The Allens concluded by stating their position that they did not object to the withdrawal of Robinson LLC's claim so long as due consideration was given to their counterclaim and Motions for Sanctions.

At the trial hearing on June 8, 2016, Robinson LLC and the Allens agreed that Robinson LLC's claim would be withdrawn, subject to further argument on the sanctions and counterclaim issues (JA, 269-285). The Allens, relying on their prior Motions for Sanctions, offered to the Trial Court those matters to which they would have testified had there been a full trial. The Allens argued that Robinson LLC's failure to provide discovery responses on time, followed by its inability to produce any relevant documentation in the late-filed responses, demonstrated Robinson LLC's lack of good faith in bringing litigation for which no evidentiary support existed (JA, 269-285). The Allens highlighted Robinson LLC's admission that, even after the general district court cases, it still did not have documentation sufficient to prove its case and that it sought to withdraw its appeal for this reason (JA, 269-285). Furthermore, more broadly, the Allens argued that the history of the relations between the parties, including the oral agreement reached in good faith between the parties at the conclusion of the Allens' occupancy of the premises, meant that Robinson LLC's attempt to claim any amounts from the Allens was done in bad faith and, as a result, that the Allens were entitled to sanctions against Robinson LLC for their attorney's fees (JA, 269-285).

In response, Robinson LLC argued that it had documents to support its claim, but that the failing health of its manager precluded it from being able to produce them (JA, 269-285). Robinson LLC further argued that the Allens' counterclaim was not properly before the Trial Court because they had not filed an appeal (JA, 269-285). Robinson LLC requested that the Trial Court allow the withdrawal of its claim and dismiss the Allens' counterclaim and Motion for Sanctions (JA, 269-285).

In rebuttal, the Allens argued that Robinson LLC had the affirmative duty to ensure that sufficient evidence existed to prove its case prior to filing suit, and reiterated that their Motion for Sanctions was predicated not only on the untimely and deficient discovery responses, but on the broader history of the litigation and the relations between the parties (JA, 269-285). The Allens further argued, based on relevant case law and statutory authority, that their counterclaim was properly before the Trial Court and that it was appropriate for the Trial Court to enter summary judgment on the counterclaim given Robinson LLC's failure to produce any evidence and its stated desire to withdraw from the case (JA, 269-285).

After consideration, the Trial Court ruled that Robinson LLC's appeal would be withdrawn, but found that Robinson LLC did not bring its claim in good faith and awarded sanctions in favor of the Allens for their attorney's

fees related to the appeal (JA, 190-192, 269-285). The Trial Court also found that the Allens' counterclaim was properly before the Trial Court because an appeal of one claim brings up all related claims (JA, 190-192, 269-285). The Trial Court entered judgment in favor of the Allens on their counterclaim in the amount of $2,600.00 (JA, 190-192, 269-285). The Trial Court continued the case until July 21, 2016, for a determination of the amount of sanctions to be awarded and entry of a final order (JA, 190-192, 269-285).

On or about June 28, 2016, Robinson LLC filed a Motion to Suspend and Reconsider the Trial Court's rulings (JA, 195-255), arguing that it was improper for the Trial Court to enter judgment in favor of the Allens on their counterclaim because no trial had taken place, the statutory language did not support this decision, and the decision divested Robinson LLC of its right to a trial on the merits (JA, 195-255). Robinson LLC further argued that it had evidence for its claims and attached a series of documents, arguing that, due to the existence of these documents, its claim was well-founded (JA, 195-255) and sanctions were inappropriate as a result.

In response, on or about July 14, 2016, the Allens filed their Opposition to Robinson LLC's Motion, arguing that the Trial Court had followed the language of Va. Code § 8.01-106.1 exactly in entering orders

necessary to conclude all matters before it on appeal (JA, 256-265). The Allens further argued that they were entitled to judgment on their counterclaim because it was a factual matter under the 2005 Lease against which no rebuttal or evidence had been offered (JA, 256-265). The Allens reiterated their argument that Robinson LLC had the affirmative duty to ensure that enough evidence existed at the inception of its appeal to meet the requisite standard for proving its claims. The Allens reiterated that Robinson LLC had admitted in its discovery responses that it had no independent recollection of the amounts it was claiming from the Allens (JA, 256-265). Furthermore, the Allens questioned the relevance and timeliness of the documents attached to Robinson LLC's Motion (JA, 256-265). Appellees requested that the Trial Court confirm its prior rulings on the counterclaim and sanctions issues and enter a final order consistent with those rulings (JA, 256-265).

At the July 21, 2016, hearing, Robinson LLC renewed its argument for the Trial Court to reconsider its decision and highlighted the language of the 2005 Lease governing the condition of the premises and referenced the documents attached to its Motion to Suspend and Reconsider (JA, 269-285). Robinson LLC reiterated its argument that the Trial Court did not have the authority to enter judgment on the counterclaim under statute and

that the judgment for sanctions was unwarranted because Robinson LLC was proceeding in good faith (JA, 269-285).

In response, the Allens renewed their argument that the Trial Court had followed Va. Code § 8.01-106.1 exactly when entering judgment on their counterclaim (JA, 269-285). Appellees again questioned the relevance of the documents belatedly produced by Robinson LLC and highlighted the length of time from the filing of the Second GDC Case until when these documents were finally produced (JA, 269-285). Finally, Appellees argued that there is only a right to a *jury* trial under the Virginia Constitution (JA, 269-285).

The Trial Court denied Robinson LLC's Motion to Suspend and Reconsider (JA, 266-268), finding that Robinson LLC had not had sufficient evidence available at the start of the appeal to meet the requisite standard for proving its claims (JA, 269-285). The Trial Court did not accept or enter into evidence any of the documentation offered by Robinson LLC in connection with its Motion to Suspend and Reconsider. The Trial Court confirmed its prior rulings and entered judgment in favor of the Allens on their counterclaim (JA, 266-268). Finally, the Trial Court considered the Allens' Affidavit of Attorney's Fees and awarded the Allens $10,000.00 in sanctions (JA, 266-268).

III. ARGUMENT

A. Assignment of Error No. 1

1. Standard of Review

The Allens agree that the issue of whether the Trial Court had subject matter jurisdiction to hear their counterclaim is to be reviewed *de novo* by this Court.

2. Applicable Law

The statutory language governing counterclaims in the general district court is clear that a final judgment is to be rendered on the entirety of the case. Furthermore, while this Court has not directly ruled on the issue of whether related claims are brought before the circuit court on appeal of one claim, this issue has been inferred by this Court in at least one case and has been addressed more directly by several Virginia circuit courts, which have found that the circuit court has the jurisdiction to rehear all lower court judgments, even if less than all of those judgments are appealed.

If a counterclaim is filed in a general district court action, the judge "shall render such final judgment on the whole case as the law and the evidence require." Va. Code § 16.1-88.01 (2016). An appeal of right of "any order entered or judgment rendered" exists to the circuit court, which hears the case *de novo*. Va. Code § 16.1-106 (2016). In order to perfect

an appeal, “the party applying for the same” must post bond in most cases and also must pay writ tax. Va. Code § 16.1-107 (2016). Once the appeal is perfected, the clerk is to transmit to the clerk of the circuit court the judgment together with all pleadings and other documents. Va. Code § 16.1-112 (2016).

In *K-B Corp. v. Gallagher*, 218 Va. 381, 237 S.E.2d 183 (1977), this Court found that an unappealed counterclaim did not come before the circuit court on appeal when a final judgment was not rendered by the general district court on that counterclaim and the holder of the counterclaim did not pursue a final decision from which to note an appeal. *Id.* at 386-387, 237 S.E.2d at 187.

In viewing the effect of an appeal more broadly, this Court held in *Thomas Gemmell, Inc. v. Svea Fire & Life Ins. Co.*, 166 Va. 95, 184 S.E. 457 (1936) that

> “when an appeal is taken by either party, its effect is not only to suspend but to destroy the effect of a judgment of a justice. It makes it as though no judgment had been rendered. The cause is considered as still pending, no regard is had to the judgment of the justice, and the rights of the parties are the same as they would be in any other suit pending in the courts of record.”

Id. at 99, 184 S.E. at 458 (citing *Turner v. Northcut*, 9 Mo. 251 (Mo. 1845)).

In *Boyce v. Athey*, 4 Va. Cir. 19 (Frederick County 1980), the Frederick Circuit Court looked to the language of Va. Code § 16.1-88.01

and concluded that the judgment "on the whole case" when a counterclaim is involved renders the suit "an entity rather than…two distinct matters," thereby making the counterclaim "piggyback" with the appealed claim to the circuit court for a trial *de novo*. *Id.* Further, the trial court in *Boyce* held that this Court's decision in *K-B Corp.* implied that if the counterclaim in that case had not been abandoned, it would have been before the circuit court on appeal. *Id.*

Several Virginia circuit courts have held that, on appeal, all lower judgments are suspended pending the decision of the appellate court and that the circuit court trial, being *de novo*, involves all parties and claims, whether or not each individual claim was appealed. *See, e.g., Hansen v. McFarland*, 27 Va. Cir. 383 (City of Richmond 1992) ("[T]his court is persuaded that an appeal by any party of a district court decision serves to give an appropriate circuit court appellate jurisdiction over any other party against whom such an appeal is perfected."); *Grinnell Fire Protection Systems Co., Inc. v. Sills*, 3 Va. Cir. 489 (City of Alexandria 1979) ("'An appeal, properly perfected, transfers the entire record to the circuit or corporation court for a retrial as though originally brought therein. The judgment of the trial justice is completely annulled by the appeal and is not thereafter effective for any purpose.'" (citing *Addison v. Salyer*, 185 Va.

644, 650, 40 S.E..2d 260, 263 (1946))); *Nanney v. Navy Car Storage, Inc.*, 7 Va. Cir. 397 (City of Norfolk 1969).

3. Argument

The plain language of Va. Code § 16.1-88.01 is clear that when a counterclaim is before the general district court, the trial judge is to render a judgment on the entire case, at which point it is no longer split into separate claims. In the case at hand, the General District Court judge rendered a full and complete decision on all issues before it, including the counterclaim. When Robinson LLC noted and perfected its appeal to the Trial Court, the whole case was appealed, meaning that the Allens' counterclaim properly went before the Trial Court.

The principle that the noting of an appeal brings all related claims to the appellate court for *de novo* review has been expounded by this Court on the general matter of appeals in *Thomas Gemmell, Inc.* and *Addison*. This conclusion likewise can be strongly inferred from this Court's holding in *K-B Corp.* with respect to appeals from general district courts in particular. Several Virginia trial courts, including one in the Trial Court's own 26th Judicial Circuit in *Boyce*, reached the same conclusion as the Trial Court in the case at hand in finding that all claims that were before the

general district court. The longstanding history of Virginia case law on this issue precludes the relief sought by Robinson LLC.

If taken to its logical conclusion, Robinson LLC's argument that each and every party must note its appeal separately would lead to games of brinkmanship as the deadline for noting an appeal approaches. In a case where one party is displeased with the outcome of a general district court decision but does not necessarily desire to appeal that decision due to the financial resources that are required to do so, that party would be severely prejudiced by the opposing party noting its appeal at the last minute if such an action strips it of any right to pursue the claims that it had at the general district court level. Instead, justice is far better served by circuit courts treating general district court decisions as unified wholes—assuming that they meet the standard established in *K-B Corp.*, with a final decision being rendered on all claims. That way, when one party chooses to note its appeal, all parties are put back in the same position for the trial *de novo* in the circuit court.

While Robinson LLC is correct in noting that an appeal of right does not exist at common law and is a creature of statute, its argument overlooks the fact that, when the General District Court rendered a final judgment on the whole case, it became a unified entity subject to appeal by

any of the parties. When Robinson LLC perfected its appeal to the Trial Court, the entirety of the case was brought before the Trial Court and was subject to *de novo* review.

B. Assignment of Error No. 2

1. Standard of Review

The Allens agree that the Trial Court's decision to grant sanctions is reviewed by this Court under an abuse of discretion standard. When there is no contention that the actions undertaken by a party against whom sanctions are sought were not warranted by existing law, this Court's analysis focuses on the issue of whether the pleading or motion was "well grounded in fact to the best of the knowledge, information and belief of the attorney who signed it, formed after reasonable inquiry." *Ford Motor Co. v. Benitez*, 273 Va. 242, 250-51, 639 S.E.2d 203, 207 (2007).

2. Applicable Law

Va. Code § 8.01-271.1 provides that pleadings and oral motions must be well grounded in fact, warranted by existing law, and not interposed for an improper purpose. Va. Code § 8.01-271.1 (2016). When there is no contention that claims or arguments are not warranted by existing law, the sole criterion for analysis by this Court is whether the action was well grounded in fact to the best of the knowledge of the attorney undertaking it.

Ford Motor Co., 273 Va. at 250-51, 639 S.E.2d at 207. The requirement that pleadings and motions be well grounded in fact is a duty that arises each time a pleading is filed or a motion is made. *Oxenham v. Johnson*, 241 Va. 281, 287-288, 402 S.E.2d 1, 4 (1991).

If a pleading is filed in violation of this rule, the court "*shall* impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include . . . the reasonable expenses incurred because of the filing." Va. Code § 8.01-271.1 (2016) (emphasis added). The trial court may award the costs incurred due to the sanctionable act, but not those costs that may have arisen before said act. *EE Mart F.C., L.L.C. v. Delyon*, 289 Va. 282, 768 S.E.2d 430 (2015). Further, "evidence of similar frivolous suits . . . may be highly probative" for the purpose of determining whether an award of sanctions is warranted. *Id.* at 287 fn. 2, 768 S.E.2d at 433 fn. 2.

3. Argument

In the case at hand, the Allens based their written and oral motions for sanctions on three factors:

(1) Robinson LLC's failure to provide discovery responses on time, followed by the vague and incomplete nature of the late-filed responses;

(2) Robinson LLC's failure and inability to produce sufficient evidence, whether in discovery or in the general district court cases, to demonstrate that it had a good faith basis for its claims (including its admission at the June 8, 2016 hearing that it did not possess evidence sufficient to prove its case);[3] and

(3) The broader history of interaction between the parties, including the oral agreement by Robinson LLC to accept the property in its then-current condition at the end of the lease.

The Allens argued that these factors demonstrated a lack of good faith and harassment by Robinson LLC in filing suit and pursuing multiple pieces of litigation against the Allens.

In making its ruling in favor of the Allens, the Trial Court focused on the fact that Robinson LLC, by its own admission, had not had sufficient evidence available at the inception of its appeal to proceed in good faith to meet the requisite standard for proving its claims. The Trial Court's decision in this regard is consistent with the standard established in *Ford Motor Co.* The Allens did not make a contention that Robinson LLC's

[3] While Robinson LLC did produce a number of documents with its Motion to Suspend and Reconsider, these documents of questionable relevance were not produced until June 28, 2016, more than five months after Robinson LLC noted its appeal to the Trial Court, three weeks *after* the date of trial, and almost one year after the first litigation was filed in the Warren County General District Court.

arguments were not warranted by existing law, meaning that the sole inquiry was whether or not the Robinson LLC's action of appealing the General District Court decision was well grounded in fact. Furthermore, as in *Ford Motor Co.*, Robinson LLC admitted that it did not have sufficient evidence to prove its case at trial.

Contrary to Robinson LLC's assertion, the Trial Court did not hold that a party must have all evidence available at the inception of a suit in order to avoid sanctions. Rather, the Trial Court focused on that core of evidence that is sufficient to demonstrate from the beginning that a party has a good faith claim. When considering the protracted history of the litigation between the parties, including the first nonsuited General District Court case, the second General District Court case in which a full trial was held, and the appeal process before the Trial Court, including Robinson LLC's failure to respond adequately to discovery propounded by the Allens, the Trial Court found that Robinson LLC had not met this core standard to demonstrate that it had a good faith claim.

Based on these factors, the Trial Court did not abuse its discretion in ruling that Robinson LLC's actions were not well grounded in fact and that Robinson LLC could not have had a good faith basis for proceeding with the appeal, given the lack of evidence. Accordingly, under Va. Code §

8.01-271.1, the Trial Court properly imposed a sanction against Robinson LLC. After considering the arguments on both sides, the Trial Court determined that it would award a sanction of the Allens' costs and attorney's fees related to the appeal from the time Robinson LLC noted its appeal to the Trial Court forward.

The purported demonstrative evidence presented by Robinson LLC in connection with its Motion to Suspend and Reconsider was not produced until well after the trial date and the deadline for responding to the Allens' discovery requests. Furthermore, no request was made for the Trial Court to receive this purported evidence. As a result, the Trial Court was correct in disregarding it.

Contrary to Robinson LLC's assertion, the Trial Court's decision was made not only because of the Allens' proffer of the history of interactions between the parties at the conclusion of their occupancy of the subject premises. Furthermore, the Trial Court's decision was not made due to Robinson LLC's request to withdraw its appeal. Instead, the Trial Court viewed the totality of the circumstances, including Robinson LLC's admission that it did not have evidence to prove its case and the litigation history between the parties, in making its ruling. Accordingly, the Trial Court did not abuse its discretion.

C. Assignment of Error No. 3

1. Standard of Review

The issue of whether summary judgment is appropriate is reviewed applying the same standard as a trial court, accepting as true inferences most favorable to the nonmoving party. *Dudas v. Glenwood Golf Club, Inc.*, 261 Va. 133, 135, 540 S.E.2d 129, 130-31 (2001).

2. Applicable Law

In order for a trial court to grant summary judgment on a claim, it must accept as true the facts, and all inferences therefrom, in the light most favorable to the nonmoving party. *Id.*

Va. Code § 16.1-106.1(E) provides that, when a general district court appeal is requested to be withdrawn, the trial court is to consider whether there is any additional relief to be granted, "including but not limited to attorneys' fees by contract or statute," prior to entering an order confirming the withdrawal of the appeal. The trial court also has broad latitude to enter an order concluding all matters before it on appeal. Va. Code § 16.1-106.1(E) (2016).

Va. Code § 16.1-106.1(C) provides that the circuit court is to dispose of the case in accordance with the judgment of the general district court,

but only when "*no…written objection is timely filed*" to the request to withdraw the appeal. Va. Code § 16.1-106.1(C) (2016) (emphasis added).

If statutory language is unambiguous, the court need not apply any principles of statutory construction. *See, e.g., Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985).

Only the right to a jury trial is protected by the Virginia Constitution and relevant law. Va. Const. Art. I § 11 (2016); *Supinger v. Stakes*, 255 Va. 198, 202, 495 S.E.2d 813, 815 (1998)

3. Argument

When Robinson LLC sought to withdraw its own appeal, the Trial Court properly followed the procedures in Va. Code § 16.1-106.1(E) by considering Appellees' request for attorney's fees under Va. Code § 8.01-271.1 and proceeding to enter an order concluding all matters arising out of the appeal, including the Allens' counterclaim, which it had broad latitude to do. In its entirety, Va. Code § 16.1-106.1(E) provides as follows:

> Upon the withdrawal of an appeal from a general district court, the circuit court shall, upon request of a party who did not appeal the judgment or order, determine whether, as a result of the appeal, a party has a right to additional relief in the circuit court which has accrued since the appeal was noted, including but not limited to attorneys' fees provided for by contract or statute. Subject to any rights of a surety pursuant to § 16.1-110, the circuit court shall also order its clerk to disburse any cash bond posted to perfect the appeal as follows:

> 1. First, to the clerk of the court to cover taxable costs in the circuit court as provided by statute;
>
> 2. Second, to the prevailing party in an amount sufficient to satisfy any judgment or order entered in the general district court and any additional relief granted by the circuit court; and
>
> 3. Third, the balance, if any, to the person who posted the bond in the general district court.
>
> In addition, the circuit court shall enter such order as may be appropriate to conclude all matters arising out of the appeal from the general district court.

Va. Code § 16.1-106.1(E) (2016).

Va. Code § 16.1-106.1(E) contains only three sentences. The first sentence directs the circuit court (upon request of a non-appealing party) to determine whether there is any additional relief to be granted, "including but not limited to attorneys' fees by contract or statute," prior to entering an order confirming the withdrawal of the appeal. The second sentence deals with the payment of the appeal bond. The third sentence gives the circuit court latitude to enter an order concluding all matters before it on appeal.

In the case at hand, the Trial Court followed the relevant statute exactly. First, at the hearing on June 8, 2016, the Trial Court heard argument from counsel as to the appropriateness of an award of sanctions under Va. Code §§ 16.1-106.1(E) and 8.01-271.1 before determining that the Allens were entitled to this "additional relief" of attorney's fees under the

relevant statutory sections. Second, since the only amounts paid by Robinson LLC to perfect its appeal were the costs and taxes due to the Trial Court, there were no further considerations to be made with respect to monetary amounts being held by the Trial Court. Finally, after hearing argument from counsel, the Trial Court determined that it was appropriate to resolve the Allens' counterclaim by (1) specifically finding that it was properly before this Court on appeal and (2) awarding summary judgment in favor of the Allens. This action was necessary and appropriate in order to "conclude all matters arising out of the appeal from the general district court." Va. Code § 16.1-106.1(E). Unlike what Robinson LLC appears to argue, the statutory language confers on the circuit court broad authority to "enter such order as may be appropriate to conclude all matters arising out of the appeal from the general district court." This authority is not limited to merely granting "additional relief . . . which has accrued since the appeal was noted."

Despite Robinson LLC's arguments regarding the principles of *expressio unius est exclusio alterius* and *ejusdem generis*, a plain reading of the statutory language cited above makes it clear that the Trial Court had the ability to do what it did. If statutory language is unambiguous, the court need not apply any such principles of statutory construction. *See, e.g.*,

Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985); *School Bd. of Chesterfield County v. School Bd. of City of Richmond*, 219 Va. 244, 250-51, 247 S.E.2d 380, 384 (1978).

Furthermore, there is no dispute that the security deposit that was the subject of the Allens' counterclaim was actually paid. Robinson LLC produced or otherwise disclosed no documents or information to the contrary, whether or not accepted into evidence by the Trial Court. Viewing the facts in the light most favorable to Robinson LLC, the Allens paid the security deposit at the commencement of the 2005 Lease and Robinson LLC did not return it to the Allens at the conclusion of their occupancy of the premises.

The mere fact that the Allens' counterclaim came before the Trial Court "piggyback" on the appeal noted by Robinson LLC does not mean that the counterclaim was automatically withdrawn once Robinson LLC requested to withdraw its appeal. Indeed, the parties agreed that the Allens' counterclaim and motions for sanctions would remain pending before the Trial Court. Since the entirety of the case came before the Trial Court for *de novo* review, the Trial Court acted appropriately in entering an order to dispose of all elements of the case, including the Allens' counterclaim.

Robinson LLC knew that the Allens intended to continue to pursue their counterclaim and sanctions motion. It was proper for the Trial Court to enter judgment on the Allens' counterclaim because payment of the security deposit by the Allens was a matter of material fact according to the 2005 Lease to which no evidence had been presented to the contrary. Thus, viewing the facts in the light most favorable to Robinson LLC, the Trial Court correctly concluded that summary judgment was appropriate.

IV. CONCLUSION

For the reasons stated herein, the decision of the Trial Court to award judgment in the Allens' favor on their counterclaim and to award sanctions in favor of the Allens was proper and should be upheld. The judgment of the Trial Court should be affirmed in its entirety.

In summary, longstanding principles of Virginia case law relating to appeals hold that when a case is appealed, all claims are placed on hold pending review by the appellate court. A decision by a general district court is rendered on the entirety of the case, at which point it is no longer split into separate claims. When an appeal by one party is noted to the circuit court, all claims related to the final judgment come before the circuit court as well. The Trial Court properly decided that the Allens'

counterclaim came before it on appeal, and further properly decided that summary judgment in favor of the Allens was appropriate since the subject matter of the counterclaim was a matter of material fact against which no argument or evidence had been offered.

A court is obligated to award sanctions if a pleading or motion is not grounded in fact or warranted by existing law, or if it is interposed for an improper purpose. The Trial Court did not abuse its discretion in determining that, since Robinson LLC admitted that it did not have evidence sufficient to prove its case at trial, sanctions were an appropriate remedy to compensate the Allens for their costs related to the appeal. The Trial Court rightly disposed of all matters before it pursuant to law and was not required to reinstate the judgment of the General District Court upon receipt of Robinson LLC's request to withdraw its appeal.

V. PRAYER FOR RELIEF

WHEREFORE, Appellees, Douglas O. Allen and Deborah J. Allen, by counsel, respectfully request that this Court affirm the judgment of the Trial Court in its entirety and grant them such further relief as this Court deems appropriate, including but not limited to their costs and reasonable attorney's fees incurred in defending against this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel states and certifies that the foregoing Opening Brief of Appellee, consisting of 6,289 words and 29 pages, is in compliance with Rule 5:26 of the Rules of the Supreme Court of Virginia and was sent via email, this 26th day of June, 2017, to:

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