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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3828-16T1

ANDREA DAVIDOVICH, a/k/a  
ANYA DAVIDOVICH,

Plaintiff-Respondent,

v.

ISRAEL ICE SKATING FEDERATION,  
BORIS CHAIT, IRINA a/k/a IRENE  
CHAIT, and GALIT CHAIT,

Defendants-Appellants.

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Submitted December 11, 2017 – Decided January 8, 2018

Before Judges Sabatino, Accurso and O'Connor.

On appeal from Superior Court of New Jersey,  
Law Division, Bergen County, Docket No. L-  
8543-14.

Spector & Ehrenworth, PC, attorneys for  
appellants (Brian D. Spector, Douglas A.  
Goldstein, and Danielle M. Koch, on the  
briefs).

Buchanan Ingersoll & Rooney PC, attorneys for  
respondent (Christopher J. Dalton, Jinkal  
Pujara, Stuart P. Slotnick, and Lauren A.  
Isaacoff, on the brief).

PER CURIAM

Defendants Israel Ice Skating Federation ("the Federation"), Boris Chait, Irina Chait, and Galit Chait, appeal the trial court's April 19, 2017 denial of their motion to recover attorney's fees from plaintiff Andrea Davidovich and impose other sanctions upon her. In essence, defendants dispute the trial court's finding that plaintiff's now-concluded lawsuit against defendants, which concerned her freedom to participate in international ice skating events for a different country, was not frivolous. We affirm.

The intricate history of the parties' bitter and protracted dispute and the litigation is detailed at length in this court's June 23, 2016 published opinion and need not be repeated fully here. See Davidovich v. Isr. Ice Skating Fed'n, 446 N.J. Super. 127 (App. Div. 2016). Briefly, plaintiff is a dual citizen of Israel and the United States. She competed with her then-partner in the pairs ice skating competition for the Federation as a member of the Israeli team at the 2014 Winter Olympics in Sochi, Russia. Following those Olympics, plaintiff requested the Federation release her from the Israeli team so that she could skate for another country. After the Federation refused her request, and a representative of the International Skating Union ("ISU") indicated at that time to the Federation it would not override that decision, plaintiff sued defendants in the Law Division. Her complaint mainly sought declaratory and injunctive relief seeking

to be released from the Federation, but also asserted various tort claims.

Defendants vigorously opposed plaintiff's lawsuit, principally arguing that the Superior Court lacked the jurisdictional authority to intercede in this sporting dispute. Defendants also served a written "safe harbor" notice on plaintiff pursuant to Rule 1:4-8 stating that it regarded her complaint to be frivolous, and demanding she withdraw it. Plaintiff pressed forward despite the letter.

In September 2015, the trial court granted partial summary judgment to plaintiff, and ordered the Federation to issue her a release. Davidovich, 446 N.J. Super. at 144. The court rejected defendants' contention that plaintiff's claims were non-justiciable. Ibid. Under protest, the Federation issued a release as ordered by the court. Id. at 145. We granted the Federation's motion for leave to appeal the trial court's ruling, but did not stay the release order. Id. at 146.

Because a critical threshold issue in the appeal was whether plaintiff had a remedy with the ISU, either directly or through the United States Figure Skating Association (the "USFSA"), we directed plaintiff to attempt to obtain relief from the ISU as a condition of her right to use the court-ordered release. Id. at 147. Plaintiff accordingly made direct requests to both the ISU

and the USFSA, asking the latter to petition the ISU on her behalf. Ibid. After neither the ISU or the USFSA initially entertained her requests, plaintiff submitted a clarified request to the USFSA making plain that she intended only to procure a release allowing her to skate for the United States. Id. at 148.

Given these developments, we temporarily remanded the matter to the trial court to reexamine whether plaintiff had sufficiently exhausted her alleged non-judicial remedies. Ibid. After an evidentiary hearing, the trial court issued a supplemental decision in April 2016, concluding that plaintiff had sufficiently attempted to exhaust those remedies. Id. at 148-49. Meanwhile, despite the court-ordered release, plaintiff did not compete with the USFSA or any other international team while the litigation continued.

Perhaps due in part to the pendency of this litigation, the ISU revised its rules in various respects at its June 2016 Congress in Croatia. Among other things, the ISU adopted a "reasonableness" standard, limiting the right of a member country to withhold releases from skaters wishing to leave their teams after a one-year waiting period. Id. at 149-50. The revised ISU rules also clarified the procedures for obtaining from the ISU a waiver from a member team's denial of such a release. Id. at 150-51. A few

days later, the USFSA petitioned the ISU on plaintiff's behalf with such a waiver request. Id. at 151.

On June 23, 2016, we issued our published opinion resolving the interlocutory appeal. Among other things, we vacated the trial court's order granting partial summary judgment and injunctive relief to plaintiff. Id. at 155-59. We noted in this regard that the ISU's rules in existence before the June 2016 Congress did not provide a "clear avenue" for an individual skater to pursue from the ISU a release over their member team's objection. Id. at 157. Even so, we noted that the waiver process for plaintiff prescribed under the revised ISU rules, with the support of the USFSA, was then underway, and that it would be best if that process were completed. Id. at 157-58. We therefore deferred to the ISU's forthcoming decision, consistent with case law that generally favors yielding to the internal process of amateur sporting organizations to regulate membership disputes. Ibid.; see Dolan v. United States Equestrian Team, Inc., 257 N.J. Super. 314, 317-19 (App. Div. 1992). We further concluded there were abundant genuine material issues of fact respecting plaintiff's remaining tort-based and other claims, and remanded to the trial court to adjudicate those claims upon the presentation of pertinent testimony. Davidovich, 446 N.J. Super. at 159. Overall, we therefore affirmed the trial court's rulings in part,

reversed them in part, and remanded for further proceedings. Id. at 162. Neither party sought Supreme Court review of our decision.

Eventually, in September 2016 the ISU Council granted the USFSA's request for plaintiff to be released from control by the Federation. In its detailed written decision, the ISU Council determined that the Federation's refusal to release plaintiff after the one-year waiting period contemplated by the ISU rules had lapsed was not based on "legitimate" grounds. The ISU Council observed that the Federation's refusal to release plaintiff after the one-year period – essentially as a retaliatory action against plaintiff for the filing of her lawsuit – was a "manifest misuse" of the Federation's refusal rights. Particularly germane to the present fee-shifting dispute, the ISU Council noted that the Federation "was not coerced to incur substantial legal costs. It could have avoided them by simply granting the permit requested . . . or by engaging in negotiations with [the] USFSA." In sum, the ISU Council concluded that the Federation's continued denial of a release to plaintiff "unduly restrains her in her skating activities, infringes her personality rights and is unreasonable."

Thereafter, plaintiff moved in the trial court for voluntary dismissal of her remaining claims we had remanded. Defendants accepted dismissal, but separately argued that they were entitled to counsel fees from plaintiff and other sanctions.

The trial court granted dismissal of the complaint. It denied defendants' motion for sanctions, finding that plaintiff's lawsuit had not been frivolous.

On the present appeal, defendants seek reversal of the trial court's denial of sanctions. Defendants argue that plaintiff's lawsuit was not founded upon a good faith, reasonable basis in law or equity; that her non-judicial remedies had been sufficiently clear within the then-existing ISU rules and she had failed to exhaust them; that she had asserted her claims in bad faith for the purpose of harassing defendants; and that the trial court was biased.

Having fully considered these and the other sub-points raised by defendants, we affirm the denial of fees and sanctions, substantially for the cogent reasons the trial court articulated in its April 19, 2017 written decision. We add only a few amplifying comments.

As a limited exception to the "American Rule" disfavoring the shifting of attorney's fees, our statutes and Court Rules entitle a prevailing party to reasonable costs and fees associated with defending against a non-prevailing party's frivolous action. N.J.S.A. 2A:15-59.1(a). See also R. 1:4-8. The term "frivolous" in this context has received a "restrictive interpretation." Belfer v. Merling, 322 N.J. Super. 124, 144 (App. Div. 1999)

(citing McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561 (1993)). This restrictive approach recognizes the principle that citizens presumptively should have ready access to our courts. Ibid. (citing Rosenblum v. Borough of Closter, 285 N.J. Super. 230, 239 (App. Div. 1995)). Each litigant generally should bear its own costs, where the litigation at least possesses "marginal merit." Ibid. (citing Venner v. Allstate, 306 N.J. Super. 106, 113 (App. Div. 1997)).

As defined in the applicable statute, a frivolous claim is one "commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury," or where the nonprevailing party knew or should have known the claim lacked "any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." N.J.S.A. 2A:15-59.1(b). Thus, "[a] claim will be deemed frivolous or groundless when no rational argument can be advanced in its support, when it is not supported by any credible evidence, when a reasonable person could not have expected its success, or when it is completely untenable." Belfer, 322 N.J. Super. at 144 (citing Fagas v. Scott, 251 N.J. Super. 169, 189 (Law Div. 1991)). "Sanctions are warranted only when the pleading as a whole is frivolous or of a harassing nature." United Hearts, LLC v. Zahabian, 407 N.J. Super. 379, 383 (App. Div. 2009)



(citations and quotations omitted). Our courts consider the test to be one of "objective reasonableness." Iannone v. McHale, 245 N.J. Super. 17, 29 (App. Div. 1990).

Further, an appellate court must give considerable deference to the fee determination of the trial court. A trial court's fee determination "will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).


Applying these standards, we concur with the trial court's determination that plaintiff's lawsuit was neither frivolous nor pursued in bad faith. Plaintiff was legitimately seeking in this action the ability to pursue her competitive skating career internationally with another member country. Before the ISU rules and standards were clarified and amplified in June 2016, her ability as an individual skater to seek redress directly from the ISU was uncertain. She did not deliberately choose to bypass administrative remedies that had yet to be clearly established. When she did pursue those remedies with the support of the USFSA, the ISU Council found that she had been unreasonably denied a release by the Federation. That determination, which we must respect, provides a strong basis for concluding that plaintiff's quest for a release was justified. We also accept the ISU

Council's observation that the Federation could have reduced its legal costs, either by attempting to pursue an amicable resolution of the dispute or by not persisting in withholding a release unreasonably on grounds that the ISU Council decisively found to lack justification.

Although, in hindsight, neither side completely "won" on all of the issues in this case, we are unpersuaded that the litigation was frivolously pursued (or, for that matter, defended).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION