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# Appeals court punishes lawyer again in continuing saga over 'frivolous' litigation vs Kindercare

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A state appeals panel has ordered a lawyer to fork over another \$22,864 in sanctions – bringing his total to more than \$166,000 – for filing “frivolous” motions and appeals meant to harass a company that runs a chain of child care centers, in connection with a suit the lawyer pursued on behalf of a former employee fired by the company.

The Illinois First District Appellate Court ordered longtime Chicago lawyer Dennis J. Stolfo to pay out yet again in his long-running legal pursuit of Kindercare Learning Centers. The March 14 ruling was delivered by Justice Joy V. Cunningham, with concurrence from Justice Maureen E. Connors and Justice Sheldon A. Harris.

The case stems from a lawsuit filed in 2004 in Cook County Circuit Court by Mary Iacovetti. She had been director of a Kindercare childcare facility, but was fired for allegedly failing to properly monitor children. She hired Stolfo and sued Kindercare, as well as three of Kindercare’s staff, for retaliatory discharge and defamation. However, the suit went off the rails after depositions, including one in which Iacovetti purportedly admitted incidents that led to her termination had occurred. Defendants’ motion for summary judgment was then granted in 2009.

Stolfo responded with an appeal, which the First District court addressed in 2011 and spurned as “frivolous.” Appellate justices warned Stolfo he should be “much more circumspect in bringing matters before this court.”

Back in circuit court, a judge ordered Stolfo to pay \$139,992 to Kindercare for Kindercare’s legal fees incurred fighting the suit after the point at which Stolfo knew or should have known the case was “hopeless.”

Representing himself, Stolfo proceeded to contest the order in circuit and appellate court. His main argument was Kindercare had changed from a Delaware corporation to a Delaware limited liability company. Stolfo claimed that as a result, the Kindercare party which had been awarded the money had “ceased to exist” and thus could not be a party to the case.

At one point in these proceedings, the appellate court ordered Stolfo to pay another \$4,083 to Kindercare for pursuing an obviously dead suit. Stolfo was also scolded for filing an appeal with an “improper purpose,” namely to “delay, harass or cause needless expense.”

By September 2015, the case was back before the appellate court following another Stolfo appeal, and Kindercare again argued Stolfo should be fined and required to pay Kindercare’s legal fees associated with responding to the appeal.

Before the court addressed the appeal, it noted Stolfo’s written submission to the court was “rambling, jumbled, and mostly incoherent,” as well as “repetitious” and, in many spots, “undecipherable.” Given the poor quality of Stolfo’s presentation and its lack of facts, the court pointed out it had the right to simply disregard Stolfo’s appeal. However, the court said it went ahead and considered the appeal based on information gleaned from Kindercare’s brief and the case record.

Nonetheless, the appellate court denied Stolfo’s appeal, based on the “strong judicial policy favoring finality of judgments.” In line with this doctrine, the court noted Stolfo made old and new arguments.

The appellate court rejected the old arguments, because they had already been considered and rejected in earlier proceedings. As for the new contentions, they were turned down, because Stolfo could have advanced them earlier, but failed to explain why he had not done so.

The court also decided Stolfo should pay an additional \$22,864 to cover Kindercare’s attorney fees for fighting Stolfo’s appeal – an easy decision, justices added.

“In light of Stolfo’s blatant disregard for our court’s prior admonitions, we have no difficulty in finding that this current appeal is frivolous and ‘not taken in good faith,’” Cunningham wrote.

However, justices stopped short of fining Stolfo, determining the \$22,864 was sufficient “at this point.” Stolfo was further ordered to obtain permission from the appellate court before filing any more appeals.

Stolfo has been a lawyer in Illinois since 1972 with no record of disciplinary action, according to the Illinois Attorney Registration and Disciplinary Commission.

Wentzel Law Offices, of Chicago, represented Kindercare Learning Centers.

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### **Stolfo Law**

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