

Zappin v. Comfort, 301568/14

January 19, 2017

- Appellate Division, First Department
- 301568/14
- Before: Acosta, J.P., Mazzairelli, Manzanet-Daniels, Webber, JJ.
- For Plaintiff: Appellant pro se: Anthony Zappin.
- For Defendant: For respondent: Robert M. Wallack of counsel, The Wallack Firm, P.C., New York.
Attorney for the child: Harriet Newman Cohen of counsel, Cohen Rabin Stine Schumann LLP, New York.

Cite as: Zappin v. Comfort, 301568/14, NYLJ 1202776998760, at *1 (App. Div., 1st, Decided January 17, 2017)

CASE NAME

Anthony Zappin, Plaintiff-Appellant v. Claire Comfort, Defendant-Respondent

301568/14

Before: Acosta, J.P., Mazzairelli, Manzanet-Daniels, Webber, JJ.

Decided: January 17, 2017

ADDITIONAL INDEX NUMBER

6252

ATTORNEYS

Appellant pro se: Anthony Zappin.

For respondent: Robert M. Wallack of counsel, The Wallack Firm, P.C., New York.

Attorney for the child: Harriet Newman Cohen of counsel, Cohen Rabin Stine Schumann LLP, New York.

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Order, Supreme Court, New York County (Matthew F. Cooper, J.), entered September 21, 2015, which, insofar as appealed from as limited by the briefs, imposed sanctions against plaintiff husband for violating the Rules of the Chief Administrator of the Courts (22 NYCRR) §130-1.1, unanimously affirmed, with costs.

Supreme Court's detailed decision is amply supported by the record, and the husband does not advance any meritorious argument that his conduct was not frivolous or in bad faith, or not designed to "harass or maliciously injure another," such that his conduct should not be sanctioned (22 NYCRR 130-1.1[c]). The record establishes that the husband engaged in unprofessional, outrageous and malicious conduct on multiple occasions, most recently by filing the bad faith disciplinary complaint against the attorney for the child's (AFC) medical expert with the Department of Health's Office of Professional Medical Conduct. Under the circumstances, particularly where the husband has exhibited a pattern of bad faith conduct throughout the proceedings despite repeated warnings not to do so, the sanctions imposed by Supreme Court were entirely proper (see 22 NYCRR 130-1.3; 22 NYCRR 130-1.1).

We have considered each of the husband's procedural arguments, including that he was entitled to a hearing because he did not have fair notice that sanctions were being considered against him, and find them unavailing. The husband had fair notice that sanctions were being considered, as the AFC requested sanctions in both her moving affirmation and again in her reply papers on the motion, but the husband did not address the AFC's request either in opposition or in surreply (see *Matter of Minister, Elders & Deacons of Refm. Prot. Dutch Church of City of N.Y. v. 198 Broadway*, 76 NY2d 411 [1990]). The husband was also warned repeatedly throughout the proceedings that he must adhere to the Rules of Professional Conduct (22 NYCRR 1200.0).

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Motion to strike brief and for sanctions, and cross motion to strike portions of reply brief denied.

**THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.**

ENTERED: JANUARY 17, 2017