

misjoinder has occurred, the proper remedy is to move for a severance or to drop the party in question.” Kent, et al., R.I. Rules Civil Procedure with Commentaries § 21:2 (2006) (citing Ziegler v. Akin, 261 F.2d 88 (10th Cir. 1958)). The granting or denial of a motion to drop a party to the action is within the sound discretion of the trial justice and not a matter of right. Mateer v. Mateer, 105 R.I. 735, 745, 254 A.2d 417, 422 (1969) (citing 2 Barron & Holtzoff, Federal Practice & Procedure § 543 (Wright ed. 1961)). A trial justice’s decision to remove a party will not be disturbed unless an abuse of discretion can be demonstrated on appeal. Id.

In his motion, Appellant moves to amend the caption and remove Zoning Board members named in their individual capacity. Appellant argues that the incorrect caption is the result of a clerical error and that there are no counts asserted against Zoning Board members personally. In response, Zoning Board member Allen Rivers (Rivers) filed a conditional opposition to Plaintiff’s Rule 21 motion, stating that he does not object to his removal individually from the appeal if the Court vacates its prior Decision, sanctions Appellant and/or his counsel, and requires Appellant to pay all of his attorney’s fees incurred in defending himself individually.¹ Alternatively, he argues that Appellant did not make a clerical error in naming him in his individual capacity because his name was singled out in the caption and because he was named in his individual capacity in the caption and the “Parties” section of the Complaint. Rivers further argues that statements made by Appellant’s counsel to the media further support the contention that including Rivers in his individual capacity was not a mistake.

Here, although the caption of the Complaint names all Zoning Board members individually and in their capacity as members of the City of Woonsocket Zoning Board of Review, the body of the Complaint states that the Zoning Board members are being sued only in

¹ On October 21, 2013, this Court issued a Decision remanding this case to the Zoning Board for a new hearing on Appellant’s zoning application.

their capacity as Zoning Board members, with the exception of Rivers. (Compl. ¶¶ 3-8.) Nevertheless, neither of the two counts indicate that any of the Zoning Board members, including Rivers, were sued personally. Count I states that the Zoning Board prejudiced substantial rights of Appellant and asks the Court to reverse the Zoning Board's denial of Plaintiff's application. Id. at ¶ 30. Count II states that "[t]he decision of the Defendant Zoning Board was without substantial justification and a clear abuse of discretion warranting an award of reasonable attorneys' fees" Id. at ¶ 36. Thus, it is clear that Appellant proceeded against the Zoning Board members solely in their professional, governmental capacity. Moreover, it is clear from the actions of both parties, as well as subsequent filings, that the case proceeded against the Zoning Board members solely in their professional capacity.

As for Rivers' request for attorney's fees, this Court adheres to the well-established "American rule" that requires each litigant to pay its own attorney's fees absent statutory authority or contractual liability." Moore v. Ballard, 914 A.2d 487, 489 (R.I. 2007) (citing Eleazer v. Ted Reed Thermal, Inc., 576 A.2d 1217, 1221 (R.I. 1990)); see Blue Cross & Blue Shield of R.I. v. Najarian, 911 A.2d 706, 711 (R.I. 2006). An exception to this rule is that courts have "inherent power to fashion an appropriate remedy that would serve the ends of justice." Moore, 914 A.2d at 489 (quoting Vincent v. Musone, 574 A.2d 1234, 1235 (R.I. 1990)). This exception only applies in three narrowly defined circumstances: (1) when a party's "litigation efforts directly benefit others[,]; (2) as a sanction for the willful disobedience of a court order[,]; or (3) when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Najarian, 911 A.2d at 711 n.5 (R.I. 2006) (internal citations and quotation marks omitted).

Here, Rivers does not cite to any statutory authority or contractual provision that would entitle him to attorney's fees. See Moore, 914 A.2d at 489. Having reviewed the record, this

Court is also not convinced that Appellant or his attorney engaged in conduct that falls within the exceptions that warrant sanctions. See generally Najarian, 911 A.2d at 711 (refusing to deviate from the “American Rule” and award attorneys’ fees to the prevailing party). Therefore, each party must bear its own attorney’s fees, costs, and expenses. See Eleazer, 576 A.2d at 1221. Furthermore, as the request to vacate the October 21, 2013 Decision is beyond the scope of this Decision, the Court declines to address that argument.

In conclusion, this Court grants Appellant’s motion to remove Zoning Board members named in their individual capacity. See Mateer, 105 R.I. at 745, 254 A.2d at 422. This Decision does not affect parties being sued in their capacity as Zoning Board members. Parties shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Gary Fernandes v. Thomas Bruce, et al.

CASE NO: PC 12-5459

COURT: Providence County Superior Court

DATE DECISION FILED: May 30, 2014

JUSTICE/MAGISTRATE: Procaccini, J.

ATTORNEYS:

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