

alleged was a frivolous discovery motion. Mr. Fiorenzano, for his part, objected to the motion to seal; and he in turn sought sanctions against Mr. Lima. After a hearing, a justice of the Superior Court granted the motion to seal; but, significantly, the justice denied both parties' motions for sanctions.

Mr. Fiorenzano timely appealed from that ruling. The parties' filings reflect that some attempts were thereafter made with respect to reaching a global settlement; but, in the end, no settlement was consummated.

Time continued to pass; and, it having become clear that Mr. Fiorenzano had not perfected his appeal from the granting of the motion to seal, Mr. Lima moved to dismiss the appeal, and he also moved for sanctions against Mr. Fiorenzano.

On January 13, 2012, a second justice of the Superior Court (not the same justice as had previously granted the motion to seal and denied the motions for sanctions) granted the motion to dismiss the appeal. However, the second justice then proceeded to assess counsel fees as a sanction against Mr. Fiorenzano in the amount of \$1,500, said amount being deemed compensation for the effort of Mr. Lima's attorney in obtaining dismissal of the appeal.

After having scrutinized the record and having considered the oral and written submissions of the parties, we are unable to perceive any basis for the second justice's apparent conclusion that, apart from the bare fact that that appeal had not been perfected, there had been sanctionable conduct by Mr. Fiorenzano. It is certainly true that he had failed to perfect his appeal, but dismissal of the appeal was available and appropriate as a sanction for that failure—and, indeed, the appeal was in fact dismissed.¹ See generally Estate of Mitchell v. Gorman, 970

¹ The dismissal of the appeal has not been appealed to this Court.

A.2d 1 (R.I. 2009). No statute or rule calls for any further sanctions for the failure to perfect an appeal.

Accordingly, we order that the \$1,500 sanction be vacated.²

Entered as an Order of this Court this 18th day of *December, 2013*.

By Order,

/s/
Clerk

² We would emphasize that our ruling in this case is based on the record before us. It would be a grave error, however, for either party to infer that there might be some kind of immunity from sanctions in the event that sanctionable conduct should occur in any future litigation.

We would add that it is our fervent hope that these parties will now decide to proceed down the path of reconciliation rather than that of further litigation. See Estate of Mitchell v. Gorman, 970 A.2d 1, 6 (R.I. 2009); Arena v. City of Providence, 919 A.2d 379, 396 (R.I. 2007); Gunn v. Union Railroad Co., 27 R.I. 320, 336-37, 62 A. 118, 125 (1905).



RHODE ISLAND SUPREME COURT CLERK'S OFFICE

Clerk's Office Order/Opinion Cover Sheet

TITLE OF CASE: Frank Fiorenzano v. Kenneth Lima.

CASE NO: No. 2012-236-Appeal.
(NC 08-202)

COURT: Supreme Court

DATE ORDER FILED: November 18, 2013

JUSTICES: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ.

WRITTEN BY: N/A – Court Order

SOURCE OF APPEAL: Newport County Superior Court

JUDGE FROM LOWER COURT:
Associate Justice Stephen P. Nugent

ATTORNEYS ON APPEAL:
For Plaintiff: Frank Fiorenzano, Pro Se
For Defendant: Richard M. Fisher, Esq.