STATE OF MICHIGAN

COURT OF APPEALS

RONALD A. STEINBERG and DEBRA STEINBERG,

Plaintiffs-Appellees,

v

LAWRENCE CONSTRUCTION and ZILKA HEATING & COOLING, INC.,

Defendants-Appellants.

UNPUBLISHED
January 29, 2002

No. 226996
Oakland Circuit Court
LC No. 98-005810-CK

Before: White, P.J., Whitbeck, C.J., and Holbrook, Jr., J.

PER CURIAM.

Defendants Lawrence Construction Co. and Zilka Heating & Cooling, Inc., appeal as of right from the judgment the trial court entered after the parties submitted to arbitration. They challenge the trial court's decision not to award them costs and fees they requested as sanctions against plaintiffs Ronald and Debra Steinberg for filing what Lawrence and Zilka deemed a frivolous suit. We affirm.

I. Basic Facts And Procedural History

In August 1993, the Steinbergs contracted with Lawrence to remodel their home and to build an addition onto it. This contract, with a price of $89,000, provided:

> The owner, upon signing this contract, represents and warrants that he or she is the owner of the above property. Any problems or claims arising out of, or relating to, this contract, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and the judgement [sic] may be entered on the award in any court having jurisdiction.

Attached to this contract were two descriptions of the actual work to be done to the home, including a new heating and cooling system. The first description, which was from Lawrence, referred to "heating per attached sheet." The second description, denominated a "proposal," identified the heating and cooling equipment that Zilka agreed to furnish and install, including a Tempstar gas furnace, a Tempstar air conditioner, a Honeywell two-zone damper system, a humidifier, programmable thermostats, and other items. In this document, which a Lawrence representative signed, Zilka gave the Steinbergs a one-year warranty on parts and labor and a

five-year "Tempstar parts and labor service contract." In short, the Steinbergs signed a contract with Lawrence, which in turn subcontracted the heating work to Zilka.

In order to allow the trades full access to the house, the Steinbergs moved out of their home in the winter of 1993-1994. When they returned home, they discovered that there was very little heat reaching the bedroom area of the house, which was part of the area where the new heating and cooling system was intended to function. The Steinbergs then contacted Zilka, which inspected the heating system and discovered that one of the dampers was defective. Zilka then repaired or replaced the defective damper. Zilka also replaced the furnace motor that had burned out in February 1994.

In February 1997, a Zilka employee informed the Steinbergs that they would have to pay for the replacement furnace motor because five-year warranty for the furnace, a 1991 model, had expired.[1] Apparently, this was news to the Steinbergs, who contended that this furnace had been sold to them as "new" in August 1993. Zilka eventually paid for the new motor. Further, despite complaints regarding the humidifier component of the heating system, Zilka did not fix it.

In December 1997, the Steinbergs apparently lost heat to the bedroom area. A Zilka employee examined the heating system at their home, removed the damper, and determined that it was again malfunctioning. Zilka, however, refused to repair or replace the damper unless the Steinbergs paid for the work.

According to Lawrence and Zilka, the ongoing problems with the heating in the Steinbergs' house could be attributed to their decision to install a system that was too small. Despite being warned that their choice of heating equipment was inadequate, financial considerations apparently convinced the Steinbergs' to choose this heating system.

On May 1, 1998, the Steinbergs sued Lawrence and Zilka. Factually, they claimed that ever since they had returned to their home in winter 1994, the heating system had functioned inadequately. They had insufficient heat and humidity, the heat escaped to the attic, and the house was drafty. Despite complaining to Lawrence and Zilka, the problems persisted. In order to compensate for the heating problems, the Steinbergs were forced to raise the temperature on the thermostat, which they said increased their heating expenses "substantially" and forced the furnace to run for longer periods. They asserted that this expensive solution to the problem would mean that the furnace would wear out sooner than expected and would also require other components to be replaced more quickly than anticipated. Legally, the Steinbergs claimed that Lawrence and Zilka had breached their respective contracts and warranties. They asked to be awarded damages for the increased heating expenses, added wear on the heating system, the cost to repair the heating system, and to be compensated for their "discomfort." While the Steinbergs did not ask for a specific amount of damages, they claimed that the "sum in controversy exceed[ed] $25,000 . . . ."

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[1] The details of what transpired in the intervening years from 1994 through 1997 are not clear from the complaint or elsewhere in the record. In the Steinbergs' appellate brief, they suggest that this 1997 incident was a second furnace motor failure rather than an ongoing dispute over the 1994 failure.

Lawrence and Zilka separately moved for summary disposition on a number of grounds. In pertinent part, however, they both claimed that the contracts with the Steinbergs required disputes arising out of the contract to be submitted to arbitration, making summary disposition under MCR 2.116(C)(7) appropriate. Additionally, Zilka argued that it was entitled to sanctions under MCR 2.114(E), (F), MCR 2.625(A)(1), (2), and MCL 600.2591. While Lawrence also claimed that it was entitled to sanctions, it cited only MCR 2.114(F) and MCR 2.625(A)(2). The Steinbergs replied to these motions by contending that there was no agreement to arbitrate claims relating to Zilka, that the fraud Lawrence and Zilka committed was outside the scope of any agreement to arbitrate, and that discovery and mediation were necessary before the substantive matters involved in the case could be addressed definitively.[2] The Steinbergs also asked to amend their complaint to include a fraud claim.

The trial court rejected the Steinbergs' arguments, holding that their claims all related to work arising out of their contract with Lawrence. In turn, their relationship with Zilka arose out of that contract, requiring arbitration for claims against both defendants. The trial court declined to permit the Steinbergs to amend their complaint to reflect the fraud theory because the statute of limitations had run on any such claim, making amendment futile. The trial court also denied Lawrence's and Zilka's requests for sanctions "at this time. If addressed, they shall be brought upon separate motions of the parties and verification of the Defendants[']costs and attorney's fees incurred as a result of this litigation."

In March 1999, the Steinbergs demanded arbitration proceedings, seeking $10,000, costs, attorney fees, and damages for fraud. In Lawrence's response to the demand for arbitration, it claimed that the Steinbergs' claims were frivolous and, therefore, sought costs and fees. The arbitrator denied the Steinbergs' claims. The arbitrator ordered the Steinbergs to pay fees of $993 to the American Arbitration Association, $597.33 to Lawrence, and $597.33 to Zilka.[3] Though the Steinbergs asked the arbitrator to explain the award, Lawrence and Zilka objected to any such explanation. Accordingly, the American Arbitration Association case administrator informed the parties that the arbitration file would "remain closed in the absence of a court order, or the agreement of the parties, to reinstate the arbitrator's authority for the purpose of providing an explanation of the award."

Lawrence and Zilka then filed a single motion for entry of judgment on the arbitrator's award. They asked to recover all costs incurred during arbitration pursuant to MCR 3.602(M). "Alternatively," they asked to be awarded all fees, costs, and attorney fees allowed under MCL 600.2591 for this "frivolous" action from the time the Steinbergs filed their complaint. Aside from arguing that the Steinbergs' claims had no legal merit, Lawrence and Zilka argued that the Steinbergs had also filed the suit "to extort from Zilka a free zone damper to replace one that is not under warranty and for which plaintiffs refuse to pay in advance to have installed." As evidence that the suit was frivolous from the start, Lawrence and Zilka claimed that when filing the action in circuit court, the Steinbergs had asked for damages in excess of $25,000, but had

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[2] We gather the substance of their arguments from the trial court's opinion and order granting summary disposition.

[3] In whole or part, the awards of fees to Lawrence and Zilka apparently accounted for fees they had paid to the American Arbitration Association.

lowered the amount to $10,000 when demanding arbitration. Further, Lawrence and Zilka evidently argued that this lawsuit was part of the Steinbergs' continuing pattern of threats. Specifically, they claimed that Ronald Steinberg constantly reminded Zilka employees that he was an attorney, threatening "legal action if they did not comply with Plaintiffs' every demand." The proposed order Lawrence and Zilka submitted to the trial court with their motion would have awarded Zilka $65,472.88 and Lawrence $8,058.08 for "fees costs, and sanctions."

Neither of the Steinbergs appeared at the March 15, 2000, hearing on this motion for judgment and sanctions even though Ronald Steinberg was representing himself and his wife. Nor does the record reflect that they responded to the motion before the trial court held the hearing on it.

The trial court granted Lawrence and Zilka's motion for entry of judgment, but denied their motion for sanctions, explaining:

> [T]he Court declines to assess costs pursuant to MCR 2.114, 2.625 and MCL 600.2591. The Court cannot state to the necessary degree of certainty that plaintiffs had no reasonable basis to maintain the action. That their legal position was devoid of arguable legal merit or that the primary purpose of the suit was to harass or annoy defendants [sic].
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> Rather, any sanctions would appear to violate MCR 2.114(f) [sic], the provision pertaining to punitive damages. In reaching this conclusion, the court has reviewed its Opinion and Order of January 7th as well as the Court file pleadings.
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> While the Court agrees, based on the limited facts before it that the arbitrator reached the correct result, the Court is unable to state that plaintiffs claims were so egregious as to constitute frivolous claims.
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> This portion of defendants' motion is denied. The Court observes the defendants could possibly have requested such relief from the arbitrator as the arbitration cause [sic] does not appear to have prevented such a finding.
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> The Court will grant defendants reasonable attorney fees for this motion in the amount of $250.00. . . .

The judgment, therefore, required the Steinbergs to pay Lawrence and Zilka $597.33 each, with the additional $250 to Zilka as the award for reasonable attorney fees related to the motion.

Lawrence and Zilka then moved for rehearing of their motion for costs and sanctions pursuant to MCR 2.119(F)(3). They argued that, because no one appeared to represent the Steinbergs at the hearing and the Steinbergs did not otherwise respond to the motion, the trial court erred in addressing the substance of the motion rather granting all the relief requested, including sanctions. In essence, Lawrence and Zilka claimed that the Steinbergs' failure to appear at the hearing "entitled" them "to a Default Judgment as to the proposed Judgment tendered to the court and served on Plaintiffs MCR 2.601-603." By ruling on the motion itself,

the trial court had deprived Lawrence and Zilka of their "rights to a Default." Notably, however, Lawrence and Zilka had failed to ask for a default at the hearing.

The Steinbergs responded to the motion for rehearing, arguing that Lawrence and Zilka had succeeded in obtaining the arbitration that they claimed was their right and that their motion for costs and sanctions amounted to a challenge to the arbitrator's award. They asserted that if Lawrence and Zilka could "contest the award successfully, then Plaintiffs should be able to contest being required to arbitrate by an appeal." Further, "If this matter is not put to rest once and for all, it will take on its own life." Thus, the Steinbergs asked the trial court to deny the motion for rehearing without specifically addressing Lawrence and Zilka's argument concerning their right to a default.

The trial court, treating the motion for rehearing as a motion for reconsideration, rejected Lawrence and Zilka's argument that they were entitled to a default:

> The Court finds Defendants are not entitled to the relief sought as they incorrectly interpret and apply the Court Rules upon which they rely. No where in the rules cited is it provided that the court shall enter a default on a motion where the opposing part has failed to respond. Nor does it allow the Court to grant whatever relief has been requested without verifying entitlement to that relief. Yet, that is precisely what Defendants have suggested the Court do.
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> MCR 2.119(E)(4)(a)(i) and (ii) states that where a party objects to the entry of a proposed Order and the Order is subsequently noticed for entry, the objecting party must either appear at the hearing or file a response indicating objections. Here, it appears that Plaintiffs object – at least implicitly – to entry of Judgment on the arbitration award. When Defendants motioned the Judgment for entry, Plaintiffs were obligated to respond either in writing or at the hearing. Because they failed to do either, the Court awarded Defendants reasonable attorney fees and costs under MCR 2.119(E)(4)(c) in the amount of $250. Other than this rule, the Court is unaware of any other authority which permits it to award sanctions without inquiring into the substantive allegations supporting such a request.
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> Moreover, the Court did grant Defendants the entry of an Order on the arbitration award pursuant to MCR 3.602. The arbitrator had the authority to award to [sic] attorney fees, i.e., the relief Defendants sought at the . . . hearing, yet apparently chose not to do so because the arbitration award did not grant such relief. Hence the relief sought by Defendants could be said to be a request to modify the arbitrator's decision under MCR 2.602(K) [sic: MCR 3.602(K)]. That issue was never addressed by Defendants. Additionally, even if the Court were to assume it had authority to grant sanctions independent of the arbitrator's award, such a request was extraneous to the entry of the Order because no substantive determination had been made on the merits of that issue (other than what the arbitrator awarded). Under the rules on which Defendants relied in seeking sanctions in their original motion, the Court is obligated to make a meritorious finding that they were entitled to sanctions. See, MCR 2.615(A)(2) and M.C.L. 600.2591.

> Under Defendants' theory, a Court would be required to grant whatever relief is sought anytime a responding party fails to appear or file a written response simply because the moving part has attached a proposed Order to it's motion, regardless of how meritless or outrageous such a request may be. The Court declines to give credence to such a ludicrous and preposterous proposal, as it is unsupported by our Court Rules.

II. Responsibility To Decide Claims And Award Sanctions

Lawrence and Zilka's first argument, that the trial court erroneously "abdicated" to the arbitrator its responsibility to decide whether a claim is frivolous and what "additional costs" to award is patently meritless. As support for this argument, they point out that, at the March 15, 2000, hearing on their motion for entry of judgment and sanctions, the trial court indicated that Lawrence and Zilka could have asked for costs and fees in arbitration because the arbitration clause in the contract did not forbid it. What Lawrence and Zilka fail to acknowledge is that the trial court discussed at length the substance of their claim that they were entitled to costs and fees as a sanction and unambiguously found that they had failed to prove that the action was frivolous at all. In short, the trial court did not abdicate its responsibility to decide whether to award costs and fees to Lawrence and Zilka; it did so directly, albeit with a result they do not like. Whether the decision to deny them costs and fees was erroneous presents a separate question that Lawrence and Zilka address in the other issues they raise in this appeal. We analyze this question in the following section.

III. Sanctions

A. Standard Of Review

We review the trial court's finding that this lawsuit was not frivolous to determine whether the trial court clearly erred.[4] "A finding is clearly erroneous if this Court is left with a definite and firm conviction that the trial court made a mistake."[5]

B. Frivolous Claims

Trial courts have authority to sanction a party that brings a frivolous claim or motion that stems both from the court rules and statute. MCR 2.114(E) permits sanctions when a party or the party's attorney fails to sign a document as required in the court rule, which includes, among other things, a representation from the individual signing the document that it has a factual foundation, arguable legal position,[6] and is not being used "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."[7] Under MCR 2.114(F), a party who has pleaded a frivolous claim or defense in violation of the signature rule

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[4] *Michigan Twp Participating Plan v Federal Ins Co*, 233 Mich App 422, 437; 592 NW2d 760 (1999).

[5] *In re BKD*, 246 Mich App 212, 215; 631 NW21d 353 (2001).

[6] MCR 2.114(E)(2).

[7] MCR 2.114(E)(3).

"is subject to costs as provided in MCR 2.625(A)(2)." MCR 2.625(A)(2) states in relevant part that "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591 . . . ." MCR 2.625(A)(2) augments subsection (1) of that same rule, which largely permits costs to the prevailing party in an action. More importantly, this lengthy chain of court rules all point to MCL 600.2591 as the primary rule of law defining frivolous claims:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
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> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
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> (3) As used in this section:
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> (a) "Frivolous" means that at least 1 of the following conditions is met:
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> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
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> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
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> (iii) The party's legal position was devoid of arguable legal merit.
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> (b) "Prevailing party" means a party who wins on the entire record.

Lawrence and Zilka's arguments implicate the definitions of frivolous in MCL 600.2591(3)(i) and (iii). While they also cite MCR 3.602(M) as authority for taxing "just" "compensation" costs, this court rule does not permit a trial court to sanction a party for filing a frivolous claim. Thus, while we address these various court rules when necessary in our analysis, we use MCL 600.2591 to define a frivolous claim. In any event, this definition is highly similar to the definition in MCR 2.114(E).

C. Fraud Claim

Lawrence and Zilka contend that the Steinbergs' fraud claim was frivolous because they pleaded it ineffectively in the circuit court and then renewed it in arbitration. As primary authority for this position, Lawrence and Zilka cite *Vermilya v Dunham*.[8] In *Vermilya*, the

[8] *Vermilya v Dunham*, 195 Mich App 79; 489 NW2d 496 (1992).

plaintiff's son sustained injuries when a steel soccer goal was pushed on him.[9] The plaintiff, Harlan Vermilya, sued the school and later moved to amend the complaint to add the school principal and the students who toppled the goal as defendants.[10] The trial court permitted Vermilya to add the students as defendants, but denied the motion with respect to the principal, Dale Dunham.[11] The trial court then granted the defendants' motion for summary disposition.[12] However, later, Vermilya instituted a separate action against Dunham, arguing that he was grossly negligent, apparently in failing to ensure that the goals were anchored sufficiently.[13] The trial court summarily disposed of that action as well and, in addition, awarded costs to Dunham as a sanction against Vermilya for filing a frivolous lawsuit.[14] This Court affirmed the trial court's conclusion that there was no question of fact to try concerning Dunham's gross negligence because

> the undisputed facts in this case preclude a finding that defendant's conduct amounted to gross negligence. Defendant became aware that the goals could be tipped over approximately one to two weeks before plaintiff's son was injured. He then asked his maintenance supervisor to determine how the goals could be anchored, checked with the maintenance supervisor on his progress, made announcements in school instructing the children to stay off the goals, and disciplined students for climbing the goals. The trial court properly granted defendant's motion for summary disposition.[15]

More importantly, this Court also affirmed the trial court's decision to sanction Vermilya, stating:

> In awarding costs to defendant, the trial court stated that before this action had been filed it had denied plaintiff's motion to amend the complaint in the action against Kolb Middle School to add Dunham as a defendant because such an amendment would be futile. The trial court then stated that sanctions were warranted because, despite the trial court's earlier ruling, plaintiff filed this separate action against defendant. Upon review of the record, we conclude that the trial court was correct in finding that plaintiff knew of the lack of merit in his allegations against defendant when plaintiff's motion to amend the complaint in the action against Kolb Middle School was denied. Filing another action with essentially the same allegations was therefore frivolous.[16]

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[9] *Id*. at 80-81.

[10] *Id*. at 81.

[11] *Id*.

[12] *Id*. at 81, n 1.

[13] *Id*. at 80-81, 83.

[14] *Id*. at 80.

[15] *Id*. at 83.

[16] *Id*. at 84.

Lawrence and Zilka analogize the arbitration proceeding in this case to the second civil suit in *Vermilya*, arguing that arbitrating the fraud claim was frivolous because the trial court had already concluded that it was barred by the statute of frauds.[17] In other words, demanding arbitration of the fraud claim was frivolous because the Steinbergs' "legal position was devoid of arguable legal merit."[18]

Whether the trial court applied the correct statute of limitations when determining that it would be futile to amend the complaint to include a fraud claim is not at issue in this appeal. However, according to *Kuebler v Equitable Life Assurance Society of the United States*,[19] the six-year statute of limitations in MCL 600.5813 applies to well-pleaded fraud claims, not the three-year period the trial court applied. Even if the period of limitations for fraud commenced the day the Steinbergs signed the contract with Lawrence, it would not have expired by the time they filed the complaint, or even by the time the trial court decided the motion for summary disposition. Of course, the Steinbergs would have been on stronger legal footing had they appealed the trial court's summary disposition order to this Court rather than merely reasserting fraud in the arbitration. Nevertheless, this is at least tangential evidence of the legal merit to the fraud claim, at least with respect to the timeliness issue the trial court considered dispositive.

Even assuming that the trial court properly concluded that the statute of limitations was three years for the fraud claim and that the statute had run, we are not certain what the substance of any such claim was. The Steinbergs' brief in response to Zilka's motion for summary disposition is in the trial court record. However, their reply to Lawrence's motion for summary disposition, which is evidently when they asked the trial court to allow them to amend the complaint, is missing from the record. We cannot consider the factual assertions in the Steinbergs' appellate brief that they learned a number of facts relevant to a fraud claim between the time when the trial court granted summary disposition and the time when they filed their demand for arbitration asking for "fraud damages." To do so, would allow the Steinbergs to expand the record on appeal.[20]

Nevertheless, the Steinbergs' argument makes it clear that we have no way to discern from the record whether the proposed fraud claim against Lawrence and Zilka in the original circuit court action was identical to the fraud claim addressed in the arbitration. Only by being able to look at the substance of both claims would we be able to conclude that the Steinbergs lacked new and timely grounds to assert fraud in the arbitration. Without exaggeration, the sole references to the arbitration fraud claim that we can find among the papers in the trial court record is the request for "fraud damages" in the arbitration demand, which is brief by design, and

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[17] Lawrence and Zilka's argument suggests that the Steinbergs actually pleaded a fraud claim, which the trial court determined had no merit. In fact, the Steinbergs never pleaded a fraud claim in the circuit court because the trial court denied their motion to amend the complaint.

[18] MCL 600.2591(3)(iii).

[19] *Kuebler v Equitable Life Assurance Society of the United States*, 219 Mich App 1, 5-6; 555 NW2d 496 (1996).

[20] See *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 580; 609 NW2d 593 (2000), aff'd on other grounds 463 Mich 652 (2001).

the statement "statute of limitations bars fraud claim" in Zilka's response to the demand, which is also no more than a page long. Though Lawrence and Zilka submitted select documents from the arbitration to the trial court in support of their motion for entry of judgment and sanctions, they simply do not reveal the substance of the fraud claim. Nor do we have any firm idea concerning the substance of the fraud claim that the Steinbergs raised in the circuit court. To the best of our knowledge, it *may* have somehow related to the expired warranty. Even the trial court commented on the "limited facts before it" when discussing whether Lawrence and Zilka were entitled to sanctions.

This Court in *Vermilya* evidently was able to draw on the trial court record to conclude, at least implicitly, that the claims against Dunham, the defendant, were the same in the suit being appealed and in the suit in which the trial court refused to add him as a defendant.[21] Other cases in which this Court has upheld the trial court's decision to sanction a party for filing a frivolous claim or suit have also depended on this ability to compare the present and previous actions and claims.[22] However, the record before us makes it impossible to conduct that comparative analysis with respect to the fraud claims in this case. Thus, while we could speculate at length concerning the nature and substance of the fraud claims, the record prevents us from having "a definite and firm conviction that the trial court made a mistake."[23]

We also think it noteworthy that the very limited record suggests that only Zilka disputed whether the statute of limitations barred the fraud claim in arbitration, not Lawrence. Yet, Lawrence relies on this allegedly improper fraud claim to ask for fees and costs that exceed the arbitration award by $7460.75. This lends credence to the trial court's suspicions that Lawrence and Zilka were using the request for sanctions to obtain punitive damages, which MCR 2.114(F) expressly forbids.

D. Harassment

Lawrence and Zilka also contend that the Steinbergs only brought suit to harass them until they would agree to fix the damper zone for free. As proof of this argument, Lawrence and Zilka point to three factors. First, the bulk of the Steinbergs' complaint recounted problems that had been remedied. Second, the complaint and the Steinbergs' brief opposing Zilka's motion for summary disposition intimate that they wanted Zilka to repair the damper for free. Third, in the circuit court action the Steinbergs asked for at least $25,000 in damages, which they lowered to $10,000 in the arbitration.

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[21] See, generally, *Vermilya*, *supra* at 85.

[22] See *Energy Reserves v Consumers Power Co*, 221 Mich App 210; 561 NW2d 854 (1997) (because res judicata barred the suit, sanctions were appropriate); cf. *Gramer v Gramer*, 207 Mich App 123, 126; 523 NW2d 861 (1994) (trial court erred in denying sanctions for frivolous suit because the previous property settlement clearly barred the cause of action).

[23] *BKD*, *supra* at 215.

Viewed as part of the whole circumstances, these factors still do not paint a picture of the Steinbergs filing suit simply to harass Lawrence and Zilka. Michigan is a fact pleading state,[24] which is why our court rules encourage litigants to provide the factual basis for their claims.[25] We see nothing misleading or otherwise objectionable about the way the Steinbergs succinctly described the alleged facts leading to the dispute in this case. Indeed, Lawrence and Zilka do not challenge these allegations in the introductory portion of the complaint as untrue. It would be far more difficult to understand the parties' perspectives on why they should or should not have to pay for the damper repair without knowing the history of repairs on this unit.

Further, MCR 2.111(B)(2) required the Steinbergs to demand in the complaint the relief they were seeking in the lawsuit. The damper zone issue was at the core of this dispute and helped trigger the lawsuit. Lawrence and Zilka do not contend that the heating system, or the damper zone itself, functioned adequately for the Steinbergs. The parties merely disagree over who should be responsible for the problems. Thus, we hardly think that announcing the relief that they were seeking, including having Zilka repair or replace the damper zone for free, was evidence that the Steinbergs filed suit to harass anyone.

As for the different amount of monetary damages requested in the circuit court action and arbitration, we do not discount that lowering a request for damages, when added to other suspicious factors, could indicate that the request for greater damages was meritless and, therefore, intended to harass. However, in this case, the amount of damages requested in the complaint was directly related to the jurisdictional amount necessary to file an action in circuit court; had the Steinbergs indicated that they were seeking less than $25,000 in monetary damages, they would have been required to file suit in the district court.[26] Though not directly related to jurisdiction, the record reveals that the $10,000 demand was also significant in the context of the arbitration because it was the first threshold for a higher filing fee. For claims up to $10,000, the Steinbergs had to pay a $500 filing fee. Had they requested between $10,000 and $50,000 in damages, the fee would have risen to $750, and so forth up the fee scale. While Lawrence and Zilka suggest that the Steinbergs delayed arbitration by failing to pay these filing fees, this only supports the inference that money did matter to the Steinbergs when it came to identifying the damages they were seeking and, therefore, selecting the filing fee they would have to pay. In other words, with evidence that the Steinbergs were unable to pay their arbitration fees, it is understandable that they would choose the lowest fee available for arbitration, without necessarily indicating that they believed that they were entitled to any less than they had originally asked to be awarded.

More importantly, we cannot say that even higher request for damages in the circuit court were baseless. There was expensive equipment at issue and the Steinbergs asked to be compensated not only for the increased wear to the equipment and the likelihood that they would have to replace it earlier than they expected, but also for their own inconvenience. Had we ever

[24] See *Iron Co v Sundberg, Carlson & Associates, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997); see also *Borsuk v Wheeler*, 133 Mich App 403, 413; 349 NW2d 522 (1984) (Kelly, P.J., concurring).

[25] See MCR 2.111(B)(1).

[26] MCL 600.8301(1).

been put in the position of a factfinder, we might not have agreed that they were entitled to the amount they claimed, the trial court had reason to express that this was a close case, not an example of a frivolous suit. As the trial court put it, it was "unable to state that plaintiffs['] were so egregious as to constitute frivolous claims. There are no grounds for us to conclude that the trial court clearly made a mistake when it evaluated the nature of the complaint and determined that it was not frivolous.

IV. Conclusion

At the close of their appellate brief, the Steinbergs ask this Court to award them appellate costs and fees, presumably because they contend that this appeal was, itself, frivolous. They provide no argument or authority for this request and, therefore, have abandoned it.[27] Thus, we are denying their request.

Affirmed.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Donald E. Holbrook, Jr.

[27] See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).