STATE OF MICHIGAN

COURT OF APPEALS

JAMES R. MORRIS,

Plaintiff-Appellant/Cross-Appellee,

v

KRISAN ARBANAS and EASTWOOD CLINIC,

Defendants-Appellees/Cross-Appellants,

and

ROBIN KAHLER,

Defendant.

UNPUBLISHED
October 29, 2002

No. 229938
Wayne Circuit Court
LC No. 99-916061-NO

JAMES R. MORRIS,

Plaintiff-Appellant,

and

DESMOSTHENES LORANDOS,

Appellant,

v

KRISAN ARBANAS and EASTWOOD CLINIC,

Defendants-Appellees,

and

ROBIN KAHLER,

Defendant.

No. 230561
Wayne Circuit Court
LC No. 99-916061-NO

Before: Whitbeck, C.J., and O'Connell and Meter, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff James Morris appeals as of right from the trial court's orders granting summary disposition to defendants Krisan Arbanas, Eastwood Clinic, and

Robin Kahler, and awarding sanctions against Morris and his attorney, Demosthenes Lorandos, for filing a frivolous action. Defendants cross-appeal. We affirm.

I. Basic Facts And Procedural History

In the course of an acrimonious divorce, Morris's estranged wife, Sherry Morris, became concerned that Morris had sexually abused their son when the son returned from an unsupervised weekend visit with him. The son informed his mother that Morris "kissed his dinker." Sherry Morris contacted the police, Child Protective Services, and two medical facilities in response to her son's allegations of sexual abuse. One of the medical facilities that Sherry Morris contacted was the clinic that defendants operated. After several sessions, the psychologist on staff, defendant Krisan Arbanas, concluded that the child had been sexually abused. In separate proceedings before this cause of action, Sherry Morris attempted to have Morris's unsupervised visitation reduced, or changed to supervised visits only. Ultimately, the circuit court concluded that the sexual abuse claim had not been substantiated and ordered that Morris be allowed unsupervised visits.

After those separate proceedings in circuit court, Child Protective Services initiated a child protective proceeding, alleging that Sherry Morris had failed to protect her son from Morris's sexual abuse. The court handling this proceeding concluded that Sherry Morris had not neglected her child in light of her (1) efforts to reduce Morris's visitation, (2) efforts to obtain a protective order, and (3) communications with Child Protective Services, the police, and the medical facilities regarding her suspicions. After the court denied Child Protective Services' motion for rehearing, Morris and Sherry Morris entered into a joint parenting agreement. According Sherry Morris, she began to suspect that defendants misled her into believing that her husband had sexually abused their son.

Morris then filed suit against defendants alleging malpractice, negligence, gross negligence, and intentional infliction of emotional distress regarding defendants' treatment and diagnosis that Morris had sexually abused their son. At the conclusion of discovery, defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). They argued that the trial court should grant their motion because they did not "brainwash" or indoctrinate Sherry Morris to believe that Morris sexually abused his son. Defendants pointed out that Sherry Morris contacted the police, Child Protective Services, and the Ypsilanti Clinic between February 5, 1997, and April 11, 1997, regarding her suspicions even before her first appointment with Arbanas on April 15, 1997. Defendants argued that this indicated that Sherry Morris believed there was sufficient reason to conclude that Morris had sexually abused their son. Additionally, defendants maintained that they did not have a professional relationship with Morris, and thus they did not owe him any duty. Lastly, defendants argued that they were entitled to statutory immunity pursuant to the Child Protection Law (CPL), MCL 722.621 *et seq*.

In response to defendants' motion for summary disposition, Morris argued that the CPL does not provide absolute immunity to professionals who report sexual abuse. Rather, he contended, the CPL requires "good faith" before a defendant is entitled to immunity, and the Legislature never intended to protect professionals from malpractice liability for making false reports of sexual abuse. From Morris's perspective, whether defendants acted in good faith was a matter for a jury to decide, not something that could be determined at the summary disposition stage. Morris argued that it was foreseeable that defendants' unprofessional conduct in assessing

his child's psychological difficulties would harm the child and his family. Morris noted that Michigan law recognizes simultaneous claims of ordinary negligence and malpractice. Morris also asserted that he was not obligated to demonstrate duty for his claim of intentional infliction of emotional distress, and that his complaint alleged the elements of this claim, making summary disposition under MCR 2.116(C)(8) inappropriate. Further, because he was pressing claims for intentional torts, Morris argued that summary disposition pursuant to MCR 2.116(C)(10) was inappropriate because defendants' credibility, state of mind, and intent were in dispute. Lastly, Morris argued that defendants' case law supporting summary disposition was distinguishable.

After holding a hearing on August 18, 2000, the trial court entered an order granting defendants' motion for summary disposition with prejudice. In a brief statement at the hearing, the trial court concluded that Morris had failed to overcome the presumption that defendants acted in good faith, and thus defendants were entitled to immunity pursuant to MCL 722.625. The trial court apparently rejected Morris's argument that Kahler was not entitled to immunity because she was a social worker, not a licensed professional. In rejecting Morris's claim on this issue, the trial court cited *Kurzaw v Mueller*,[1] as support for absolute immunity for social workers. Additionally, the trial court concluded that Morris's gross negligence, ordinary negligence, and intentional infliction of emotional distress claims warranted summary disposition because defendants did not owe Morris a duty of care. The trial court, without elaboration, determined that Morris's third-party liability argument was inapplicable. Lastly, the trial court concluded that Arbanas acted in "good faith" in light of the child's statements, which gave Arbanas a reasonable suspicion on which to act.

After the trial court granted summary disposition, defendants filed a motion to sanction Morris for filing a frivolous suit. Defendants argued that Morris's claim was frivolous within the meaning of MCL 600.2591 because (1) Morris initiated the action to harass them, (2) he had no basis to believe the facts underlying his claims were true, and (3) his legal position was devoid of legal merit. Accordingly, defendants requested $4,073.45 for costs, and $18,900 for attorney fees.

Morris responded to this motion, arguing that his claims were not frivolous. First, he contended, the $85,000 mediation panel award was evidence that his claims had legal merit.[2] Second, the primary purpose of his claims was to compensate him for the harm caused by defendants' negligent, outrageous, and reckless acts. Third, Dr. Campbell's affidavit of merit gave him reason to believe his case had legal merit. Fourth, before initiating the suit, Morris and his attorney, Demosthenes Lorandos, spoke at length to Wayne Circuit Court Judge Vonda Evans, who gave Morris custody of his child.[3] Fifth, Morris argued that his intentional infliction of emotional distress claim had to be examined in context, and the record demonstrated disputed factual issues.

Additionally, at the hearing, attorney Lorandos perceived that defendants were attacking him personally because they asked that attorney fees and costs be assigned to him and Morris

[1] *Kurzaw v Mueller*, 732 F2d 1456, 1458 (CA 6, 1984).

[2] A mediation panel award is now referred to as a "case evaluation."

[3] Whether Morris actually received custody, or a favorable visitation schedule, is not clear.

jointly and severally. Lorandos also took issue with defendants' emphasis on his record of taking similar cases that had been summarily dismissed, pointing to at least one case in which he convinced a judge not to grant the defendants immunity. Lorandos further argued that this Court affirmed the decision of the trial court in that case, and that he had won a similar claim in the Michigan Supreme Court. Lorandos provided another example of a case that he litigated for three years, in which this Court reversed the summary disposition granted against Lorandos's client. Because of the notoriety of that case, Lorandos said, clients had approached him expressing concerns against social workers and professionals with respect to false claims of sexual abuse.

Lorandos argued that the only way to prevail against professionals who make cavalier claims of child sexual abuse is to plead intentional infliction of emotional distress and ordinary negligence because the Michigan Public Health Code, 333.1101 *et seq*., makes the general duties incumbent on the professional. Lorandos also said that Michigan law is unsettled concerning whether immunity applies to social workers and psychologists, although the law is settled regarding immunity for physicians. Additionally, Lorandos argued that plaintiffs are forced to plead professional negligence against mental health practitioners under Michigan's tort reform. Lorandos also asserted that plaintiffs must plead gross negligence because, when federal and state courts have found that the defendants were not entitled to immunity, the plaintiffs pleaded gross negligence.

Lorandos provided the trial court with two cases *Champney v Faller*,[4] and *Bullock v Huster*,[5] in which summary disposition was not granted to the defendants. Lorandos argued that the claims in this case were identical to the claims in *Champney*. Lorandos also cited *Recchia v Kelly & Eastwood Oxford Outpatient Services*,[6] which revolved around similar claims, but was then being appealed to the Michigan Supreme Court. Since all these cases were won at the mediation level, Lorandos argued, Morris's claims had legal merit because reasonable minds could differ. Lorandos stated that he has litigated similar claims in eight states, and currently had similar claims pending in the United States Supreme Court, the sixth circuit, ninth circuit and eleventh circuit.

With respect to the harassment claim, Lorandos argued that if Kahler's deposition was examined carefully, he was attempting to establish recklessness by probing what Kahler knew in light of the standards of her profession, versus what she did not know. Lorandos suggested that while the very nature of advocacy can be confrontational, the comments he made during Kahler's deposition paled in comparison to defendants' recklessness in advancing false allegations of sexual abuse. In light of the unsettled status of the law on Morris's claim, Lorandos argued that the claim was a disputed question of law. Until that dispute was resolved, Lorandos thought it his obligation to advocate on behalf of parents for whom the statutes of limitations would soon bar their claims.

[4] *Champney v Faller et al*, unpublished opinion of the Washtenaw Circuit Court (Docket No. 95-4760-CK).

[5] *Bullock v Huster (On Remand)*, 218 Mich App 400, 404; 554 NW2d 47 (1996).

[6] *Recchia v Kelly & Eastwood Oxford Outpatient Services*, unpublished opinion per curiam of the Court of Appeals, issued June 30, 2000 (Docket No. 213394).

After hearing arguments, the trial court concluded, as a matter of fact and law, that Morris's claim was frivolous. First, Sherry Morris had reported instances of abuse to the police department before any member of the Morris family had contact with defendants. Second, in light of Lorandos' pedigree and previous involvement with this type of claim, he should have known that the claim was frivolous. Third, Lorandos was the attorney of record in *Recchia,* and although *Recchia* was an unpublished case, the case was identical on its face to Morris's case. Accordingly, Lorandos should have voluntarily dismissed the case because it was available to Lorandos before the court granted summary disposition in favor of defendants. The trial court reasoned that Lorandos' failure to dismiss the case voluntarily constituted harassment because it was an effort to continue Morris's claim in the trial court despite this Court's ruling, albeit in an unpublished opinion, that such a claim was frivolous.

Additionally, the trial court found that Morris's claim lacked legal merit in light of *Recchia* and Lorandos' conduct during Kahler's deposition. The trial court concluded that Lorandos' conduct went beyond harassment and constituted abuse. The court noted two instances where defendants should have terminated the deposition in light of Lorandos' abusive questioning during Kahler's deposition. The first instance of Lorandos' "abuse" pertained to the following questions Lorandos asked Kahler:

> *Q*: Okay. And what is it that you must report to Protective Services?
>
> *A*: Any suspicion.
>
> ***
>
> *Q*: So my question is this, are you to report any suspicion or reasonable suspicion?
>
> ***
>
> *Q*: What kind of suspicion are you to report?
>
> *A*: It's not up to me to determine.
>
> *Q*: *So if I told you that I think that our court reporter has been having sex with a team of sled dogs and many of them are puppies, would you report that to Protective Services*?[7]

The second instance of abuse pertained to the following colloquy between Lorandos and Kahler:

> *Q*: Lets finds out some other things that you don't know about.
>
> ***

[7] Emphasis added.

Q: But you don't know where you got your training; you don't know when you got your training, you don't remember anything from your training, and you can't remember anything that you incorporated from your training into anything you do; is that fair?

***

A: You're asking for things that you want me to say under oath as for sure, and I can't do that.

***

Q: Okay. Well, let me see if I can ask a simpler question. How prevalent-– no. That's not easy enough.

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Q: If I told you that epistemology is the study of how we know what it is we think we know, would that jog your memory?

A: About what?

Q: About what epistemology is.

A: I've taken one philosophy course, and no, I don't know what that word is.

Q: *Have you ever thought about how it is you know what you think you know*?

A: Yes.

Q: What did you come up with? *How do you know what it is you think you know*?[8]

In light of the "abusive" questioning by Lorandos, and this Court's decision in *Recchia*, the trial court concluded that Lorandos' conduct constituted harassment and abuse. Therefore, the court concluded that all three conditions were satisfied pursuant to MCL 600.2591 and found that (1) Morris initiated the action to harass defendants, (2) Morris had no basis to believe the underlying facts of his claim were true, and (3) Morris's legal position was devoid of legal merit. Accordingly, the trial court concluded that defendants were entitled to costs and reasonable attorney fees.

After examining defendants' bill of costs, the trial court concluded that the costs were proper and an evidentiary hearing was not required. The court deducted $500 from defendants' requested amount of $4,073.45 for costs because defendants failed to terminate the deposition once Lorandos became abusive. With respect to attorney fees, the court increased defendants' requested hourly amount by $50 to $200 because the trial court reasoned that, in some

[8] Emphasis added.

circumstances, attorneys are entitled to "combat pay." The court found that the amount of hours defendants spent defending this case as "believable." However, the trial court reduced defendants' requested hours from 126 hours to 100 hours because defendants failed to stop Kahler's deposition after Lorandos became abusive. Finally, the court noted that before its current decision to award defendants costs and attorney fees, it had assessed costs against both a plaintiff client and the plaintiff's attorney only once in the last ten years.

II. Summary Disposition

A. Standard Of Review

Appellate courts review de novo a trial court's decision to grant a motion for summary disposition.[9]

B. Immunity

Morris argues that the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7)[10] because he presented sufficient evidence that defendants acted in "bad-faith." Additionally, Morris argues that MCL 722.625, does not provide immunity for malpractice and negligence that results in personal injury. Further, Morris maintains that he presented sufficient evidence to establish recklessness, improper motive and intentional infliction of emotional distress to warrant that the case be submitted to a jury.

MCR 2.116(C)(7) permits summary disposition of all or part of a claim or defense when it is barred because "immunity is granted by law." MCR 2.116(G)(2) allows, but does not require, a party moving for summary disposition under subsection (C)(7) or a party opposing such a motion to submit documentary evidence in support of the party's position.[11] However, if the grounds for the motion "do not appear on the face of the pleadings," the party moving for summary disposition must submit supporting documentary evidence, including affidavits, depositions, and admissions.[12] Once the trial court receives any documentary evidence in support of or opposing the motion, it must[13] consider the evidence "to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion."[14] "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall

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[9] See *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[10] Morris also makes arguments implicating whether the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(8) and (10). Because we conclude that summary disposition under MCR 2.116(C)(7) was appropriate in this case, we need not examine whether the trial court had alternate grounds on which it could have disposed of this case.

[11] See *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

[12] MCR 2.116(G)(3)(a).

[13] MCR 2.116(G)(5).

[14] MCR 2.116(G)(6).

render judgment without delay."[15] Because our review is de novo, we engage in this same analysis of the evidence that the trial court conducted to determine whether the trial court erred in granting the motion for summary disposition.

MCL 722.625 grants immunity from tort liability for reporting child abuse by providing, in pertinent part, that

> [a] person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. *This immunity from civil or criminal liability extends only to acts done pursuant to this act and does not extend to a negligent act that causes personal injury or death or to the malpractice of a physician that results in personal injury or death*.[16]

Though Morris disputes the evidence of good faith in this case, the trial court relied on the definition of "good faith" as enunciated in *Warner v Mitts*.[17] In *Warner*, this Court held that a

> person who has "reasonable cause to suspect child abuse" is by definition "acting in good faith" when reporting the suspicions. Thus, immunity extends to reports of "suspected" child abuse regardless of the outcome of a subsequent investigation.[18]

In our view, the record demonstrates that Arbanas had reasonable cause to suspect that Morris's son had been abused in light of his statements, which is enough, alone, to support good faith.[19] Further, Sherry Morris's statements to the police, Child Protective Services, and on the medical forms she completed for the purpose of having defendants treat her son also gave defendants a reasonable suspicion of abuse.

Morris also argues that Arbanas is not entitled to immunity because the claims of sexual abuse were unsubstantiated, and he was not prosecuted for sexual abuse. However, this Court has held that whether sexual abuse claims are ever substantiated is irrelevant to whether a suspicion of abuse existed.[20] The purpose of the immunity is to facilitate the public policy

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[15] MCR 2.116(I)(1).

[16] Emphasis added.

[17] *Warner v Mitts*, 211 Mich App 557; 536 NW2d 564 (1995).

[18] *Id*. at 559.

[19] *Id*. at 559-560.

[20] *Williams v Coleman*, 194 Mich App 606, 617; 488 NW2d 464 (1992), quoting *People v Cavaiani*, 172 Mich App 706, 714-715; 432 NW2d 409 (1988).

behind the act, which is to encourage reporting of suspected child abuse.[21] Further, with respect to Morris's allegation that defendants acted with an improper motive, this Court has stated clearly stated that "'good faith' pertains to the existence of a reasonable suspicion, not the motive behind the decision to report."[22]

Morris contends that Arbanas wrongly communicated her conclusions about sexual abuse to the court in the earlier protective proceeding. However, his argument fails because it is well established in Michigan that statements made by a witness in the course of a judicial proceeding are absolutely privileged provided they are relevant, material, or pertinent to the issues being tried.[23] "Witnesses who are an integral part of the judicial process 'are wholly immune from liability for the consequences of their testimony or related evaluations.'"[24]

Morris attempts to distinguish his claim on the basis that defendants acted in "bad faith" by not applying American Psychological Association protocols to conclude that his son had been sexually abused. Essentially, Morris interprets the Child Protection Law as adding an additional requirement to reporting and investigating child sexual abuse by professionals. He seeks to hold Arbanas, in her capacity as a psychologist, to a higher standard than other professionals and therefore urges us to conclude that a breach of that higher standard constitutes malpractice and negligence. We will not do this, not only because the statute lacks a basis for such a higher standard, but also because such a standard will tend to subvert the CPL's goal of encouraging reporting.[25]

Lastly, Morris argues that Kahler, as a social worker, is not entitled to immunity because she is not "covered" under MCL 600.2912(1), which provides:

> A civil action for malpractice may be maintained against any person professing or holding himself out to be a member of a state licensed profession. The rules of the common law applicable to actions against members of a state licensed profession, for malpractice, are applicable against any person who holds himself out to be a member of a state licensed profession.

We disagree with Morris on this point. Kahler was entitled to immunity because she acted pursuant to the CPL,[26] not this provision in the Revised Judicature Act.

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[21] See *Awkerman v Tri-County Orthopedic Group*, 143 Mich App 722, 728; 373 NW2d 204 (1985).

[22] *Warner*, *supra* at 559.

[23] See *Martin v Children's Aid Society*, 215 Mich App 88, 96; 544 NW2d 651 (1996).

[24] *Maiden v Rozwood*, 461 Mich 109, 134; 597 NW2d 817 (1999), citing 14 West Group's Michigan Practice, Torts, § 9:393, p 9-131 to 9-132, quoting *Martin*, *supra* at 96.

[25] See *Awkerman*, *supra*.

[26] See MCL 722.625; *Lavey v Mills*, 248 Mich App 244, 251; 639 NW2d 261 (2001).

For all these reasons, we conclude that the trial court properly rejected Morris's arguments when it granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).

C. Intentional Infliction Of Emotional Distress

Morris also argues that the trial court erred when it granted summary disposition regarding his intentional infliction of emotional distress claim. There are four elements of a prima facie case of intentional infliction of emotional distress: "(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress."[27] The conduct underlying this tort claim must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community."[28] There is no liability for "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."[29] Although the trial court must determine initially whether the conduct underlying the claim was sufficiently extreme it could permit recovery, conflicting evidence on this issue must be submitted to the jury.[30] This case fails to rise to the level of outrageousness, especially in light of the fact that Arbanas did exactly what the law required her to do in reporting the suspected abuse. Therefore, we conclude that, as a matter of law, the trial court properly summarily disposed of this claim.

III. Sanctions And Discovery

A. Standard Of Review

Morris contends that defendants denied him meaningful discovery, and that the trial court should have sanctioned them for failing to comply with his discovery requests. This Court reviews a trial court's decision to grant or deny discovery for an abuse of discretion.[31] Additionally, this Court reviews a trial court's decision to impose sanctions for discovery abuses for an abuse of discretion.[32]

B. Background

Morris filed a motion to compel discovery on November 22, 1999, asking the trial court to (1) direct defendants to answer interrogatories and produce documents, and (2) impose sanctions against defendants. At the time that Morris filed this motion, defendants' answers to Morris's first set of interrogatories were forty-eight days late, and Eastwood Clinic's compliance

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[27] *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999).

[28] *Id*.

[29] *Id*.

[30] *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999), quoting *Doe v Mills*, 212 Mich App 73, 92; 536 NW2d 824 (1995).

[31] See *Lantz v Southfield City Clerk*, 245 Mich App 621, 629; 628 NW2d 583 (2001).

[32] See *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 265; 617 NW2d 777 (2000).

with Morris's request for production of documents was sixty-two days late. Defendants responded that the interrogatories and request for documents had been submitted to Eastwood Clinic's legal department. Further, defendants suggested that the delay in complying with Morris's requests was attributable to the multiple sets of interrogatories that Morris sent to defendants; however, defendants expected to comply with Morris's requests in a short amount of time. On December 6, 1999, the trial court granted Morris's first motion to compel, and awarded Morris sanctions against defendants in the amount of $175.

On November 29, 1999, defendants sent Eastwood Clinic's interrogatory answers, with a note that Arbanas' answers were forthcoming. On December 2, 1999, defendants sent Arbanas' interrogatory answers, with a note that a signature page was forthcoming. In a letter dated, December 14, 1999, Morris complained to defendants regarding the adequacy of defendants' interrogatory answers. Defendants responded in a letter dated December 16, 1999, reminding Morris that defendants had asked him to provide a statement regarding the specific responses that he felt were deficient, but that he had failed to so do.

On January 5, 2000, Morris filed a second motion to compel discovery and a request for imposition of discovery sanctions against defendants. Morris argued that (1) defendants sent interrogatory answers without a signature page, (2) Arbanas' answers were incomplete or insufficient, and (3) Eastwood Clinic never responded to Morris's request for documents, which were 111 days overdue. In Morris's request for documents, Morris requested defendants' "files, records, documents, raw test data, psychological tests, notes, scoring materials, program notes, and letters or documents used in any way relevant with [Morris's son] and [Morris]."

In response to the second motion to compel discovery, defendants argued that Morris failed to send the requested statement of deficiencies, and Morris preferred filing motions to compel, despite defendants' attempts to reach a solution without the trial court's intervention. Additionally, defendants argued that Morris received Eastwood Clinic's medical records regarding his son in the course of the protective proceeding, and that Morris had the opportunity to cross-examine Arbanas regarding the medical records. Lastly, defendants argued that, at the hearing held on December 3, 1999, the trial court deemed the interrogatory answers signed; however, Morris "appeared reluctant to accept that ruling, preferring instead to argue about other issues." The trial court partially granted and partially denied this second motion to compel and impose sanctions on January 14, 2000.

Morris filed a third motion to compel on April 24, 2000. Morris was unsatisfied with defendants' response time of twenty days to provide the name of a person who could be deposed on behalf of Eastwood Clinic. Additionally, Morris argued that Kahler's deposition had to be terminated because the documents he requested were not present at the deposition and, thus, Kahler could not effectively answer the questions that he had indicated, in advance, would be asked of Kahler. Lastly, Morris argued that, despite his continued efforts, Arbanas had not been made available for a deposition.

In support of his motion, Morris attached a letter dated February 2, 2000, sent to defendants requesting a representative of Eastwood Clinic be made available for a deposition regarding Eastwood Clinic's policies and procedures. Additionally, Morris requested that all policy and procedure documents pertaining to (1) intake, (2) assessment, (3) diagnostic treatment, (4) record keeping (5) treatment planning, (6) treatment team, (7) periodic review, (8)

clinical supervision (9) utilization review and (10) chart documentation be brought to the deposition. Morris also included a notice of Kahler's second deposition because her first deposition was discontinued shortly after the "sex with a sled dog team" question. Morris also included a request to reschedule Arbanas' deposition.

On April 28, 2000, defendants filed objections regarding Morris's proposed questions to Kahler regarding Eastwood Clinic's policies and procedures. Specifically, defendants argued that Morris's request was overbroad and contained no temporal restriction. Additionally, defendants argued that any policies and procedures that were in effect at the time that this cause of action arose no longer existed. Further, defendants argued that Eastwood Clinic's policies and procedures were inadmissible on standard of care issues. Defendants also contended that, because Eastwood Clinic was a subsidiary of St. John Health Care Systems (SJHCS), Morris's request violated SJHCS's intellectual property rights, which entitled defendants to a protective order regarding Morris's request for the policies and procedures. Defendants also filed a motion for a protective order regarding Kahler's deposition because of Lorandos' conduct during the deposition.

In hearings held on June 16, 2000, and June 20, 2000, the trial court heard arguments regarding the nine motions filed by the parties regarding discovery. The trial court granted Morris's motion to compel discovery of Arbanas. The trial court granted Morris's motion to compel discovery regarding Eastwood Clinic's policies and procedures pursuant to defendants' request for a protective order. Lastly, the trial court denied defendants' motion requesting a stay of proceedings to prevent Morris from receiving Eastwood Clinic's policies and procedures.

C. Abuse Of Discretion

Rather than assailing particular rulings by the trial court, Morris essentially lodges a free-form indictment against the trial court for inaction during the discovery process. However, we see no merit in his arguments. The trial court granted a number of Morris's discovery motions, which indicates that, contrary to his contention, the trial court was involved in facilitating discovery. To the extent that discovery did not occur with optimal efficiency in this case, the parties must share the blame. For instance, Arbanas' missed a deposition because her child was sick, but Lorandos also contributed to the delay in deposing Arbanas because Lorandos had an oral argument scheduled in this Court. Defendants may not have answered all the interrogatories to Morris's satisfaction, but then again he failed to provide the clarification that defendants had requested. While Morris cites delay in receiving Eastwood Clinic's policies and procedures, he did not request them at the outset of the litigation, and therefore was not denied them for the length of time he represents in his brief. Further, Morris already had some of the records he sought during discovery, such as his son's treatment records, which were involved in the 1997 protective proceeding. Additionally, while Morris refers to sanctions under MCR 2.313, he has failed to formulate an argument that explains how, when, or why the trial court was supposed to apply this rule to award him sanctions. We see no abuse of discretion.

Morris also argues on appeal that he was unable to engage fully in the mediation process because defendants failed to comply with discovery requests. Morris, however, failed to raise this issue in his statement of questions presented, so we will not review it.[33]

IV. Cross-Appeal

Defendants, on cross-appeal, argue that the trial court erred when it qualified Morris's witness as an expert. However, in light of our conclusion that the trial court properly granted summary disposition in favor of defendants, we need not address this issue.

V. Sanctions Against Morris And Lorandos

A. Standard Of Review

Morris and Lorandos argue that the trial court erred when it granted defendants' motion for sanctions on the ground that this was a frivolous action, having had no legal merit or factual basis, and was intended to harass defendants. This Court must rely on the trial court's factual findings that Morris's claims were frivolous, for which MCR 2.613(C) prescribes clear error as the proper standard of review.[34]

B. Statutory Sanctions

MCL 600.2591 provides:

> (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 non prevailing party and their attorney:
>
> ***
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least one of the following conditions is met:
>
> (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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[33] See MCR 7.212(C)(5); *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999).

[34] See *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990); *Carpenter v Consumers Power Co*, 230 Mich App 547, 555-556; 584 NW2d 375 (1988), rev'd on other grounds sub nom *Case v Consumers Power Co*, 463 Mich 1; 615 NW2d 17 (2000); *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997).

(ii) The party had no reasonable basis to believe that the facts underlying the party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

Even assuming that the trial court clearly erred in finding that this suit had no legal merit and was intended to harass, the trial court did not clearly err in finding that Morris "had no reasonable basis to believe that the facts underlying the party's legal position were in fact true."[35] The factual foundation for this case was Morris's contention that defendants had no reason to report the suspected abuse and had manipulated Sherry Morris into believing that abuse had occurred. Nevertheless, the uncontradicted facts of this case show that Sherry Morris had reported her suspicions of abuse even *before* she contacted defendants, making it impossible for defendants to have "indoctrinated" her as Morris claims. Lorandos also personally knew about Sherry Morris's preexisting suspicions when he filed the complaint in this case on behalf of Morris because he had been an attorney of record in the earlier protective proceeding, where the information regarding Sherry Morris had been made known. Accordingly, we conclude that the trial court did not clearly err when finding the facts necessary to conclude that sanctions were warranted in this case.

VI. Amount Of Sanctions

A. Standard Of Review

Morris argues that the trial court erred when it concluded that defendants' bill of costs was proper without conducting an evidentiary hearing, and sua sponte raised defense counsel's requested hourly rate as "combat pay." A trial court's determination of the amount of sanctions to impose for filing a frivolous claim is reviewed for an abuse of discretion.[36]

B. Costs

If a trial court finds that an action or defense is frivolous, it must award costs, including all reasonable costs actually incurred by the prevailing party and any costs allowed by law or court rule.[37] Sanctions may also include payment to the opposing party for attorney fees incurred due to the filing of the pleading requesting sanctions.[38] Though Morris first claims that the trial court erred in failing to hold an evidentiary hearing on this issue, when, as in this case, the record is a sufficient record to review and the trial court explains its reasoning for the award, a hearing is not essential.[39] Further,

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[35] MCL 600.2591(3)(ii).

[36] *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

[37] See MCL 600.2591(1).

[38] See *Maryland*, *supra* at 32.

[39] See *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999).

> [t]here is no precise formula for computing the reasonableness of an attorney's fee. *Crawley v Schick*, 48 Mich App 728; 211 NW2d 217 (1973). However, the factors to be taken into consideration in determining the reasonableness of a fee include, but are not limited to, the following:
>
> "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." . . . [40]

In this case, between the time that the complaint was filed in May 1999, and the hearing on defendants' motion for sanctions in September 2000, defendants responded to or made appearances for no less than thirty motions filed in the trial court. As the trial court noted, deposition in this case had been quite lengthy. The trial court also reduced defendants' time from 126 attorney to 100 attorney hours. Raising the hourly fee to $200 only resulted in a net gain of $8.78 per hour based on the actual amount of hours defendants originally requested. Altering the hours in his manner was part of the trial court's discretion to award reasonable fees irrespective of the actual fees defendants incurred.[41] In light of the complex and acrimonious nature of this case and defense counsel's experience and background, we conclude that the trial court did not abuse its discretion in awarding sanctions against Morris and Lorandos jointly and severally, without holding an evidentiary hearing, and raising defendants' per hour rate to $200.

Though Morris disputes the taxation of costs for depositions and record requests on appeal, he did not raise this issue in the trial court and has not presented an issue related to this matter. Thus, we do not address this issue.[42]

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Patrick M. Meter

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[40] *J C Building Corp II, v Parkhurst Homes, Inc*, 217 Mich App 421, 430; 552 NW2d 466 (1996), quoting *Schick, supra* at 737.

[41] See *Head, supra* at 113-114.

[42] See MCR 7.212(C)(5); *Miller, supra* at 172.