STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS TROSZAK,

Plaintiff-Appellant,

v

JOSIANE M. PRANTERA, ASSURED HOME NURSING SERVICE INC., DEBORAH SHEA, FRANK SHEA, and LORI KRINOCK,

Defendants-Appellees,

and

PIERCE, DUKE, FARRELL, MENGEL & TEFELSKI, P.C., EDWARD EARL DUKE II and BEAUMONT HOSPITAL,

Defendants.

UNPUBLISHED
December 18, 2008

No. 280285
Oakland Circuit Court
LC No. 2006-079199-NZ

DOUGLAS TROSZAK,

Plaintiff-Appellant,

v

JOSIANE PRANTERA, ASSURED HOME NURSING SERVICE INC., DEBORAH SHEA, FRANK SHEA, LORI KRINOCK and BEAUMONT HOSPITAL,

Defendants,

and

PIERCE, DUKE, FARRELL, MENGEL & TEFELSKI, P.C., and EDWARD EARL DUKE II,

Defendants-Appellees.

No. 282112
Oakland Circuit Court
LC No. 2006-079199-NZ

Before: Borrello, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

In Docket No. 280285, plaintiff Douglas Troszak appeals as of right the trial court's order requiring him to pay defendants Josiane M. Prantera, Assured Home Nursing Service Inc., Deborah Shea, Frank Shea and Lori Krinock (defendants Prantera et al.) $13,257.50 in attorney fees and $655.97 in costs as sanctions under MCR 2.114(E). In Docket No. 282112, plaintiff appeals as of right the trial court's order requiring him to pay defendants Pierce, Duke, Farrell, Mengel & Tefelski, P.C., and Edward Earl Duke II (defendants attorneys) sanctions of $5,000 under MCR 2.114(E). In both cases, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant Prantera are divorced. In December 2006, plaintiff filed a complaint *in propria persona* against defendant Prantera and others, including defendant Assured Home Nursing Service Inc., a company that plaintiff asserts he helped defendant Prantera acquire, defendant Deborah Shea, an officer of defendant Assured, defendants Krinock and Frank Shea, employees of defendant Assured, defendant Duke, the attorney who represented defendant Prantera when plaintiff and defendant Prantera divorced, and defendant Pierce, Duke, Farrell, Mengel & Tefelski, P.C., the law firm for which defendant Duke is a member and principal attorney.[1] Among other claims, the complaint alleged that defendants committed and conspired to commit criminal tax fraud and perjury. The complaint alleged that defendants "fraudulently utilized the Plaintiff's dependent children and the Shea children by making false entries onto state and federal payroll reports to intentionally file improper tax returns" in the years 2003, 2004, 2005 and 2006. According to documents he filed with the trial court, plaintiff, a certified public accountant, was concerned because defendant Assured claimed it paid $10,000 each to plaintiff's children for several years, but the children never actually received the funds, which created a tax issue for them. The complaint further alleged that defendant Duke "has an established pattern of committing tax fraud that extends to his personal and professional tax returns" and that Duke "was instrumental in the improper transfer of corporate stock from Josiane Prantera to Debra [sic] Shea . . . during the divorce (Troszak v Troszak) action, in order to deflate the value of the marital asset and not pay the appropriate federal transfer taxes related to the transaction."

At the time plaintiff filed the complaint, plaintiff and defendant Prantera were engaged in post-divorce proceedings regarding parenting time and child support. In March 2007, plaintiff's counsel in the divorce proceedings wrote a letter to defendant Prantera through her divorce counsel, defendant Duke, proposing certain modifications in the Friend of the Court recommendation regarding parenting time, child support arrearages, and future child support. The letter also stated that plaintiff would agree to dismiss the complaint if defendant Prantera would agree to certain concessions in the post-divorce proceedings, including depositing

[1] The complaint also named defendant Beaumont Hospital as a defendant, but the parties stipulated to dismiss the hospital.

approximately $100,000 in trust for the children (which plaintiff asserted that defendant Prantera testified was on deposit for the benefit of the children) and assuming financial responsibility for one of the children's tuition at Eton Academy. Counsel for defendant Prantera et al.[2] wrote a letter responding to plaintiff's offer to dismiss the complaint. In the letter, counsel for defendant Prantera et al. stated that plaintiff's lawsuit was "interposed solely for harassment and utterly without merit." According to the letter, plaintiff's lawsuit was clearly brought "to harass and apply unseemly leverage against not only your client's adversaries, but also your lawyer opponent in the underlying family law dispute, Mr. Duke." The letter also asserted that plaintiff was "using the frivolous Lawsuit to otherwise extort something that [he] could not obtain from the courts" in plaintiff and defendant Prantera's divorce proceedings. The letter further referred to plaintiff's conduct in filing the complaint and then offering to dismiss it as an "old fashion 'shakedown'" and stated that defendant Prantera et al. would immediately move for summary disposition and sanctions.

Thereafter, defendant Prantera et al. did move for summary disposition and sanctions under MCR 2.114(E) and 2.625(A)(2). Defendants attorneys filed a separate but similar motion for summary disposition and sanctions. In separate orders, the trial court dismissed plaintiff's complaint against defendant Prantera et al. and defendants attorneys, but did not make a decision regarding sanctions. Thereafter, each group of defendants filed renewed motions for sanctions. On June 27, 2007, the trial court entered an order granting each set of defendants' renewed motions for sanctions and scheduling a hearing for August 8, 2007, to determine the amount and form of such sanctions. Following the hearing, the trial court entered an order awarding defendant Prantera et al. attorney fees in the amount of $13,257.50 and costs of $655.97 under MCR 2.114(E). The trial court also issued an order regarding sanctions for defendants attorneys. Citing the rule from *FMB-First Michigan Bank v Bailey*, 232 Mich App 711; 591 NW2d 676 (1998), that pro se litigants are not eligible for attorney fee sanctions under MCR 2.114, the trial court refused to award attorney fees to defendants attorneys. However, the trial court did order plaintiff to pay defendants attorneys sanctions in the amount of $5,000 for violating MCR 2.114(E).

II. Standard of Review

We review for clear error the trial court's determination whether to impose sanctions under MCR 2.114. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). A decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Id.* A trial court's finding with regard to whether a claim or defense was frivolous will not be disturbed on appeal unless the finding is clearly erroneous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002); *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 423; 668 NW2d 199 (2003).

III. Analysis

[2] Defendant Prantera et al. hired attorneys Butzel Long to represent them in the action commenced by plaintiff.

Plaintiff first argues that the trial court erred in ordering plaintiff to pay sanctions without finding that the complaint was frivolous as required by MCR 2.114. Citing MCL 600.2591(3), plaintiff also argues that the trial court failed to make findings that plaintiff filed the complaint to embarrass, harass or injure defendants, that plaintiff had no reasonable basis to believe the facts underlying the complaint or that plaintiff's position was devoid of arguable legal merit. "Whether a claim is frivolous within the meaning of MCR 2.114(F) and MCL 600.2591 depends on the facts of the case." *Kitchen*, *supra* at 662. Although it is true that the trial court did not explicitly characterize plaintiff's complaint as "frivolous" at the June 27, 2007, motion hearing, the trial court clearly concluded that the complaint was frivolous, stating: "[t]he Court is satisfied in this case that this complaint, if any complaint does require sanctions, this one does." Moreover, the trial court specifically stated that plaintiff's complaint was frivolous on the record at the August 8, 2007, hearing. Therefore, plaintiff's contention that the trial court failed to find that plaintiff's complaint was frivolous is without merit.

Furthermore, the trial court did not clearly err in finding that plaintiff's complaint was frivolous. The trial court awarded sanctions under MCR 2.114. Under MCR 2.114(D), the signature of a party or an attorney on a complaint is a certification that the document is "well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law" and that "the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." MCR 2.114(D)(2) and (3). The filing of a signed pleading that is not well-grounded in fact and law subjects the filer to sanctions under MCR 2.114(E). *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 407; 651 NW2d 756 (2002). Under MCR 2.114(E), the trial court "shall" impose sanctions upon finding that a document has been signed in violation of the rule. Therefore, if a violation of MCR 2114(D) has occurred, the sanctions provided for by MCR 2.114(E) are mandatory. *Contel Sys Corp*, *supra* at 710-711.

Plaintiff filed a complaint *in propria persona* in civil court against his ex-wife, her business associates, and the attorneys who represented her in the divorce proceedings. The complaint contained a claim that defendants all committed and conspired to commit criminal tax fraud as well as perjury. In a letter written by plaintiff's divorce lawyer to defendant Duke, plaintiff agreed to dismiss the complaint if defendant Prantera would agree to certain concessions in the post-divorce proceedings. In one of his responsive briefs before the trial court, plaintiff "admit[s] that the counts set forth [in his complaint] are not recognizable civil claims." Counsel for plaintiff made a similar statement on the record at the June 27, 2007, hearing. Based on plaintiff's letter to defendant Prantera through defendant Duke and plaintiff's admission that the complaint did not contain appropriate civil claims, it is clear that plaintiff filed the complaint for the improper purposes of harassing his ex-wife and her attorneys and business associates and influencing post-judgment proceedings regarding his divorce from defendant Prantera. The trial court's statements on the record at both the June 27, 2007, hearing and the August 8, 2007, hearing reveal the trial court did conclude that plaintiff filed the complaint for an improper purpose. For example, the trial court concluded that plaintiff "us[ed] the courts to—for some vendetta against individuals who took certain positions in other litigation" and characterized plaintiff's conduct as "reprehensible," "vexatious," and "totally inappropriate." Thus, contrary to plaintiff's contention, the trial court did make factual findings regarding the frivolity of plaintiff's complaint. Moreover, the trial court did not clearly err in finding that plaintiff's complaint was frivolous.

Plaintiff next argues that the trial court violated his absolute privilege to make statements during the course of judicial proceedings by characterizing the allegations in his complaint as "serious allegations" and by stating that the "lawsuit . . . was totally inappropriate to be filed in a civil court and for those allegations to be made—whether there's a foundation or not that's not something for me to determine." The trial court's statements were made on the record at the hearing on August 8, 2007. According to plaintiff, statements made during the course of judicial proceedings are absolutely privileged, and the trial court's ruling violates this privilege. We cannot conceive how the trial court's statements on the record violate any privilege held by plaintiff. In any event, we decline to address this issue because plaintiff raises it for the first time on appeal. Issues not raised before and addressed by the trial court are not preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Plaintiff finally argues that the trial court abused its discretion in awarding attorney fees to defendants Duke and Pierce, Duke, Farrell, Mengel & Tefelski, P.C., as sanctions under MCR 2.114 because pro se litigants are not entitled to recover attorney fees under MCR 2.114. In *FMB-First Michigan Bank*, this Court held that "pro se parties are not eligible for attorney fee sanctions under MCR 2.114[.]" *FMB-First Michigan Bank*, *supra* at 719. The trial court did not award defendants Duke and Pierce, Duke, Farrell, Mengel & Tefelski, P.C. attorney fees in this case, however. Relying on *FMB-First Michigan Bank*, the trial court properly recognized that pro se parties are not eligible for attorney fee sanctions under MCR 2.114. The trial court also properly recognized that under MCR 2.114(E), the trial court has discretion to impose an appropriate sanction that is not restricted to expenses or costs incurred. *Id.* at 726-727. "MCR 2.114(E) grants the trial court discretion to fashion an 'appropriate sanction,' which may include, but is not limited to, an order to pay the opposing party the reasonable expenses incurred . . . ." *Id.* at 727. In this case, the trial court awarded defendants attorneys $5,000 as other sanctions under MCR 2.114(E). Plaintiff has not persuaded this Court that the trial court's imposition of a $5,000 sanction under MCR 2.114(E) was not appropriate under the circumstances.

In their brief on appeal, defendants attorneys ask this Court to award them actual and punitive damages under MCR 7.216(C)(1). Under MCR 7.216(C)(1), this Court "may, on its own initiative or on the motion of any party filed under MCR 7.211(C)(8), assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious . . . ." In this case, defendants attorneys requested sanctions in their brief on appeal, rather than in a motion. "A party's request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule." MCR 7.211(C)(8). Because defendants attorneys' request for sanctions was contained in its appellate brief, the request was not made in a motion as required by court rule. Therefore, we decline defendants attorneys' request for sanctions under MCR 7.216. We also decline to grant defendants attorneys' request for sanctions on our own initiative as permitted by MCR 7.216(C)(1).

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher