

STATE OF MICHIGAN
COURT OF APPEALS

LAURA A. CHAPPELLE,

Plaintiff-Appellant/Cross-Appellee,

v

BAYBRIDGE CAPITAL ADVISORS, LLC,
ADAM GREENBERG, and MICHAEL
LAPOINTE,

Defendants-Appellees/Cross-
Appellants,

and

BERKOWITZ, POLLACK, BRANT ADVISORS
AND ACCOUNTANTS, LLP,

Defendant-Appellee.

UNPUBLISHED
March 21, 2017

No. 330642
Ingham Circuit Court
LC No. 14-000017-NZ

Before: BECKERING, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

Plaintiff, Laura A. Chappelle, appeals by right the trial court's orders granting summary disposition under MCR 2.116(C)(8) on her claims of malicious prosecution against defendants, Baybridge Capital Advisors, LLC (Baybridge), Adam Greenberg, Michael Lapointe, and Berkowitz, Pollack, Brant Advisors and Accountants (BPB), and awarding attorney fees for a frivolous claim under MCR 2.114(E). Baybridge, Greenberg, and Lapointe cross-appeal by right the trial court's orders denying their motion to dismiss on the basis of lack of personal jurisdiction and res judicata. We affirm in part and reverse in part.

I. FACTUAL BACKGROUND

Laura Chappelle's husband, Scott Chappelle, worked for Strathmore Development Company Florida, LLC, which was headquartered, operated, and maintained in East Lansing, Michigan. Both Greenberg and Lapointe worked for Baybridge, a wholly owned subsidiary of BPB, which is a Florida limited liability company that has its principal place of business in Miami, Florida. In 2009, Baybridge and Strathmore agreed that Baybridge would receive a

commission for arranging funding for a real estate development project in Florida. Laura did not sign the Representation Agreement. Through Scott, Baybridge put Strathmore in touch with Pensam Capital, which agreed to lend more than \$2,000,000 to Strathmore. Both Laura and Scott signed the Term Sheet as guarantors. The Term Sheet contained a choice of law and forum selection provision that provided that “[t]his Commitment and the proposed Loan shall be governed by the laws of Florida”

After closing on the loan with Pensam, Strathmore failed to pay the commission to Baybridge. Baybridge sued Strathmore, Laura, Scott, and others in Florida to attempt to recover the commission. Baybridge dismissed the first suit after Scott provided a promissory note to pay the commission. But when Scott defaulted on the promissory note, Baybridge brought another suit, this time against Scott, Laura, and others. According to Baybridge, it dismissed Laura voluntarily from the second suit once it obtained discovery and determined that she was not responsible for the commission. According to Laura, Baybridge dismissed her from the suit after she filed a motion for sanctions.

Laura thereafter filed the instant case in Michigan, alleging malicious and negligent prosecution. Following discovery and a series of motions, the trial court dismissed BPB, Greenberg, and Lapointe on the basis that it lacked personal jurisdiction over them. It subsequently dismissed the complaint on the basis that Laura had failed to state a claim for malicious prosecution under Florida or Michigan law and that neither jurisdiction recognized the tort of negligent prosecution.

II. STANDARDS OF REVIEW

This Court reviews de novo whether a court has personal jurisdiction over a party. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001). We also review de novo questions involving conflicts of law, *Frydrych v Wentland*, 252 Mich App 360, 363; 652 NW2d 483 (2002), and questions regarding the proper interpretation and legal effect of contractual clauses, *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

This Court reviews de novo a trial court’s ruling on a motion for summary disposition. *Oberlies*, 246 Mich App at 426. A party may move for summary disposition under MCR 2.116(C)(8) if the opposing party has failed to state a claim on which relief can be granted. “A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone.” *King v Mich State Police Dep’t*, 303 Mich App 162, 188; 841 NW2d 914 (2013). The trial court must accept all factual allegations in the complaint as true, and it may only grant summary disposition if “no factual development could possibly justify a right of recovery.” *Id.* (quotation marks and citation omitted).

We review for an abuse of discretion the trial court’s award of attorney fees. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). The trial court abuses its discretion when its decision “falls outside the range of reasonable and principled outcomes.” *Id.*

III. PERSONAL JURISDICTION

Laura argues that the trial court erred by dismissing BPB, Greenberg, and Lapointe for lack of personal jurisdiction, while recognizing that it had personal jurisdiction over Baybridge. We conclude that the trial court properly had personal jurisdiction over all defending parties.

A court must have personal jurisdiction over a party to obligate the party to comply with its orders. *Oberlies*, 246 Mich App at 427. A court has personal jurisdiction if (1) Michigan's long-arm statute, MCL 600.715, authorizes jurisdiction, and (2) exercise of jurisdiction is consistent with principles of due process. *Id.* at 428.

Michigan's long-arm statute subjects defendants to personal jurisdiction if the defendant has done, caused to be done, or causes to occur any actions in the state that result in a tort. MCL 600.715(1) and (2). It is important to consider the tort the plaintiff alleges. In this case, Laura alleges that the defendants engaged in the tort of malicious prosecution, which involves service in an improper suit as part of the tort. Baybridge undisputedly served Laura with process in Michigan, thus causing the alleged tort to occur in Michigan. Additionally, viewed in the light most favorable to Laura, Baybridge was acting on behalf of BPB, Greenberg, and Lapointe. We conclude that the long-arm statute is satisfied.

Exercise of personal jurisdiction over a defendant is consistent with due process if three elements are met:

First, the defendant must have purposefully availed himself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state's laws. Second, the cause of action must arise from the defendant's activities in the state. Third, the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. [*Oberlies*, 246 Mich App at 433 (quotation marks and citations omitted).]

A defendant purposefully avails him- or herself by causing something to be done in Michigan, or by engaging in conduct that is the principle generator of effects in Michigan. *Id.* at 434. The court should examine the defendant in the forum to determine whether the defendant should reasonably anticipate being haled into court. *Id.*

In *Hamilton, Miller, Hudson & Fayne Travel Corp v Hori*, 520 F Supp 67, 68 (ED Mich, 1981), the defendant initially filed a wrongful death suit in Florida against the plaintiff, but the Florida suit was dismissed because the plaintiff was not connected with the death in any way. The defendant subsequently sued the plaintiff in Illinois. *Id.* The plaintiff sued the defendant, an Illinois resident, in Michigan to recover for damages suffered in defending the Florida and Illinois suits. *Id.* at 68-69. Applying Michigan law, the Federal District Court held that Michigan had personal jurisdiction over the defendant because the defendant had "personally availed themselves of the privilege of serving process in Michigan." *Id.* at 69-70. Also, "through their appointed agent process server, they were physically present within the state." *Id.*

Similar to the defendant in *Hamilton*, Baybridge, Greenberg and Lapointe personally availed themselves of the privilege of serving process in Michigan. They reached out to Michigan to serve process on a Michigan resident, knowing that action would have an effect in

Michigan. This action directly resulted in Laura's claim for malicious prosecution. Thus, this case meets the first two due-process requirements.

The third prong in the due process analysis is whether the "defendant's activities [were] so substantially connected with Michigan that they make the exercise of jurisdiction over the defendant reasonable." *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 167; 677 NW2d 874 (2003). In this case, Baybridge, Greenberg, and Lapointe had multiple contacts with Michigan. They negotiated with Scott Chappelle, a Michigan resident, via e-mail and telephone contact. The agreement between Baybridge and Chappelle was signed in Michigan. And most importantly, the allegedly abusive process was served on a Michigan resident in Michigan. In sum, Baybridge, Greenberg, and Lapointe conducted business with a Michigan resident and attempted to collect a commission through service of process on that resident. These are sufficiently substantial contacts that it is reasonable to subject these defendants to personal jurisdiction in Michigan.

We conclude that the trial court erred when it determined that it did not have personal jurisdiction over these defendants. However, reversal is not required because, for reasons that will be discussed, the trial court properly dismissed Laura's complaint on substantive grounds.

IV. MALICIOUS PROSECUTION

Laura argues that the trial court erred when it granted summary disposition under MCR 2.116(C)(8) on her malicious prosecution claim because the multiple lawsuits against her constituted special damages in this case.¹ We disagree. Even presuming, without deciding, that the trial court erred by applying Florida law, Laura did not establish a claim of malicious prosecution.

The elements of malicious prosecution under Michigan law are that (1) prior proceedings terminated in favor of the present plaintiff, (2) absence of probable cause for those proceedings, and (3) "malice," more informatively described by the Restatement as "a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based." [*Friedman v Dozorc*, 412 Mich 1, 48; 312 NW2d 585, 603 (1981), quoting 3 Restatement Torts, 2d, §§ 675-681B, pp 452-473.]

Michigan law requires a special injury, which is an "injury to one's fame (as by a scandalous allegation), injury to one's person or liberty, and injury to one's property." *Friedman*, 412 Mich at 33-34. A succession of lawsuits may constitute a special injury under limited circumstances. *Kauffman v Shefman*, 169 Mich App 829, 839; 426 NW2d 819 (1988).

To succeed on a malicious prosecution claim under Florida law, a plaintiff must establish that

¹ The trial court also dismissed Laura's claims of negligent prosecution, which she does not appeal.

(1) an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued; (2) the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant; and (6) the plaintiff suffered damage as a result of the original proceeding. [*Alamo Rent-A-Car, Inc v Mancusi*, 632 So 2d 1352, 1355 (Fla, 1994).]

In this case, Baybridge's first suit against Laura was dismissed without prejudice. Baybridge entered into an agreement with Scott, who gave Baybridge a promissory note. Laura was not involved in settlement discussions. Because the dismissal was without prejudice and Laura was not involved in the settlement, Laura had no reasonable expectation that the first suit would end any controversy between her and defendants. Laura's allegations did not establish the elements of malicious prosecution under Michigan or Florida law. Accordingly, we conclude that the trial court did not err by granting summary disposition on Laura's malicious prosecution claim.

V. ATTORNEY FEES

Laura also argues that the trial court erred by awarding attorney fees to defendants on the basis that her action was frivolous. We agree.

Each document that an attorney signs must be "well grounded in fact and . . . warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. . . ." MCR 2.114(D)(2). If a party pleads a frivolous claim or defense, he or she is subject to fees and costs. MCR 2.114(F). MCR 2.114(F) provides that these costs are as provided in MCR 2.625(A)(2), which in turn provides that if the trial court finds that an action or defense was frivolous, it shall award costs under MCL 600.2591. MCR 2.625(A)(2). "One of the ways an action is frivolous is if "[t]he party's legal position was devoid of arguable legal merit." MCL 600.2591(3)(a)(iii). A claim is devoid of arguable legal merit if it is not sufficiently grounded in law or fact, such as when it violates basic, longstanding, and unmistakably evident precedent. *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002).

In this case, Laura based her claim of malicious prosecution on Baybridge's suit against her under the Term Sheet. At the time she filed the complaint, Laura was aware that she had signed the Term Sheet as a guarantor, but she had a reasonable basis to dispute her liability after the settlement in the initial case. Even though Baybridge twice dismissed Laura from earlier litigation, she arguably had a reasonable basis to assert malicious prosecution given Baybridge's conduct during the Florida litigation, the question regarding which forum was appropriate, and the then-unsettled state of Florida law regarding malicious prosecution. Laura's claims did not violate basic, longstanding, and unmistakably evident precedent. We conclude that the trial court's decision to award attorney fees fell outside the range of reasonable and principled outcomes because Laura's claims had arguable legal merit.

Because we are affirming the trial court's judgment, we decline to address their claims on cross-appeal because they provide only alternative grounds for affirmance. See *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010) (stating that this Court will not address issues that cannot have a practical legal effect on the controversy).

We affirm the trial court's dismissal of Laura's claims, but reverse its award of sanctions.

/s/ Jane M. Beckering

/s/ Peter D. O'Connell

/s/ Stephen L. Borrello