If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

MARIANNE HUFF and PERSON-CENTERED ADVOCACY SERVICES, LLC,

Plaintiffs-Appellants,

UNPUBLISHED
July 30, 2020

v

No. 349528
Ottawa Circuit Court
LC No. 18-005222-NZ

LYNNE DOYLE, STACY COLEMAN-AX, and JEFFREY L. BROWN,

Defendants-Appellees,

and

DOUGLAS VAN ESSEN, COMMUNITY MENTAL HEALTH OF OTTAWA COUNTY, and THE LAKESHORE REGIONAL ENTITY,

Defendants.

Before: BORRELLO, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Plaintiffs appeal as of right postjudgment orders entered on June 7, 2019, by Judge J. Joseph Rossi, awarding attorney fees and costs to defendants. Plaintiffs also attempt to challenge a previous order entered by Judge Jon Hulsing on February 27, 2018, suspending discovery pending the outcome of summary disposition motions, and Judge Hulsing's October 2, 2018 order, which granted summary disposition to defendants. We conclude that plaintiffs' appeal of right is limited to Judge Rossi's postjudgment orders, and we affirm Judge Rossi's award of attorney fees and costs to defendants.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff Marianne Huff is a licensed social worker; she is also the resident agent and sole member of Person-Centered Advocacy Center, LLC (PCAS). According to plaintiffs, Huff acts as an advocate for mental health service providers and consumers of these services, including

individuals with developmental disabilities or mental illness. Most notably, as an advocate, Huff appears as an "authorized representative" at Medicaid fair hearings.

Defendants are government entities and employees or representatives of these entities involved with providing services—or funding for services—for individuals with developmental disabilities or mental illnesses. In particular, Community Mental Health of Ottawa County (CMHOC) is a county-based governmental agency that provides behavioral health services. The Lakeshore Regional Entity (LRE) is a "regional entity" under MCL 330.1204b(1); among its powers as a regional entity, LRE serves as the "medicaid specialty service prepaid health plan" under MCL 330.1204b(2)(b), meaning that LRE has responsibility for facilitating Medicaid funding for CMHOC and several other similar entities in the region. Defendant Lynne Doyle serves as the executive director of CMHOC; defendant Douglas Van Essen is an attorney and serves as corporate counsel for Ottawa County. Defendant Jeffrey Brown is the former chief executive officer of LRE, and defendant Stacy Coleman-Ax is a compliance officer with LRE, who supervises the customer service department and appears as a "hearing officer" on behalf of LRE and CMHOC.

Factually, the current lawsuit arises from an underlying dispute over whether Huff—as a nonlawyer—could appear as an authorized representative at Medicaid fair hearings or whether such conduct constituted the unauthorized practice of law. In this regard, on August 29, 2017, Van Essen sent Huff a letter advising Huff that he believed she was engaged in the unauthorized practice of law and that he would report her to the Michigan State Bar Association if she did not cease practicing law. Through her attorney, Huff denied that she had engaged in the unauthorized practice of law. Van Essen then reported the matter to the Michigan State Bar Association.

Van Essen "cc'd" Doyle on his August 29, 2017 letter to Huff, and Doyle shared this letter with Brown and Coleman-Ax via e-mail. Brown responded via e-mail, thanking Doyle for sharing Van Essen's letter and indicating that LRE would also seek an opinion from LRE's corporate counsel. Although Van Essen believed that Huff had engaged in the unauthorized practice of law, he advised CMHOC to continue to communicate with Huff, at least for the limited purpose of discussing matters "pertaining to Medicaid Fair Hearings."[1] Further, after Van Essen's report to the State Bar, it is undisputed that Huff in fact continued to represent consumers during administrative proceedings.[2]

While the proceedings before the State Bar remained ongoing, plaintiffs filed the current lawsuit in January 2018. Plaintiffs' initial complaint contained claims of (1) defamation, (2) tortious interference with business relations, (3) civil conspiracy, and (4) vicarious liability, implicating Van Essen, Doyle, Brown, Coleman-Ax, CMHOC, and LRE. Broadly stated,

---

[1] This fact is clear from a letter attached to plaintiffs' complaint in which Doyle informs a consumer's parent that, on the advice of counsel, CMHOC would not discuss confidential consumer information with Huff "except in matters pertaining to Medicaid fair hearings."

[2] For example, as acknowledged in the complaint, Huff appeared as a "representative for petitioner" at an administrative hearing on November 8, 2017.

plaintiffs contended that defendants had a plan to harass, defame, humiliate, silence, and retaliate against Huff and PCAS for "further" exposing their improper actions.[3] The cornerstone of this plan, according to plaintiffs' complaint, involved Van Essen's report to the State Bar, and many of plaintiffs' allegations related to Van Essen's report to the State Bar. Plaintiffs appear to believe that the other individual defendants—Doyle, Brown, and Coleman-Ax—may also be held liable for Van Essen's opinions and his report to the State Bar, but what legally cognizable claim plaintiffs believe they have against Doyle, Brown, and Coleman-Ax on the basis of Van Essen's opinions and actions has, since the inception of this case, been unclear.

Defendants moved for summary disposition. In June 2018, Judge Hulsing issued a written 26-page opinion and order granting summary disposition to all defendants. With regard to Van Essen, among other reasons for granting summary disposition, Judge Hulsing concluded that Van Essen's report to the State Bar of Michigan was absolutely privileged as a report of potential criminal activity to the investigating authority; plaintiffs do not dispute this conclusion. The trial court concluded that LRE and CMHOC were entitled to immunity under the Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq*. Regarding Doyle, Coleman-Ax, and Brown, the trial court concluded that plaintiffs failed to state a claim on which relief could be granted. See MCR 2.116(C)(8). When granting summary disposition, Judge Hulsing also denied plaintiffs' motion to file a first amended complaint because the proposed first amended complaint failed to correct the numerous deficiencies in plaintiffs' complaint. Nevertheless, while reminding the parties of the applicable standards for sanctions, Judge Hulsing indicated that plaintiffs could file a new amended complaint.

Thereafter, plaintiffs filed a second amended complaint in July 2018, limited to defendants Doyle, Brown, and Coleman-Ax; the second amended complaint alleged (1) tortious interference with business relations or expectancies and (2) civil conspiracy.[4] In this complaint, plaintiffs again alleged that defendants had a plan to harass, defame, humiliate, silence, and retaliate against Huff and PCAS for "further" exposing defendants' actions. Briefly stated, the gravamen of plaintiffs' allegations involved the assertions that (1) Doyle could be held liable for sharing Van Essen's August 29, 2017 letter with CMHOC employees, as well as Brown and Doyle, and that (2) Doyle,

---

[3] According to plaintiffs' complaint, both CMHOC and LRE have made public the fact that the entities were "running at multi-million dollar deficits for the fiscal year 2017 because of reduced funding, operational/managerial ineptitude, professional misfeasance and/or malfeasance." These problems, and the magnitude of the problems, were originally identified in a 2015 State of Michigan directive to LRE, referred to as the "Beacon Report." Plaintiffs also allege that actions by Huff and PCAS in 2017, such as providing representation in funding disputes, communicating "procedural irregularities" to Doyle, Coleman-Ax, and Brown, and making comments at public hearings, "have further exposed" defendants' actions.

[4] The complaint also contained a claim labeled "gross negligence," which the trial court aptly recognized was not a separate claim but merely an attempt to plead in avoidance of governmental immunity. Plaintiffs appear to have abandoned "gross negligence" as a separate claim.

Brown, and Coleman-Ax could all be held liable for failing to contradict Van Essen's opinion that Huff could not lawfully act as an authorized representative.

Defendants moved for summary disposition and sanctions, which Judge Hulsing granted on October 2, 2018. In particular, Judge Hulsing granted summary disposition under MCR 2.116(C)(7) and (C)(8), concluding that plaintiffs failed to state claims for tortious interference and civil conspiracy and that defendants Doyle, Brown, and Coleman-Ax were entitled to immunity under the GTLA. Judge Hulsing also concluded that defendants were entitled to sanctions under MCL 600.2591 and MCR 1.109(E).[5]

Later, the case was reassigned to Judge Rossi,[6] who determined the amount of sanctions to be awarded to defendants. In June 2019, Judge Rossi entered two orders, awarding $900 to Doyle and $13,642.50, which included $130.40 in costs and $13,772.90 in attorney fees, to Coleman-Ax and Brown. Plaintiffs now appeal Judge Rossi's June 2019 orders as of right.[7]

II. SCOPE OF THE APPEAL

On appeal, plaintiffs contend that Judge Hulsing erred by granting summary disposition to defendants Brown, Coleman-Ax, and Doyle. Plaintiffs also challenge Judge Hulsing's suspension of discovery, and plaintiffs claim that Judge Hulsing was biased against them because he, like defendants, works for Ottawa County and because he ruled against plaintiffs. Before considering the merits of these arguments, we begin by addressing Coleman-Ax and Brown's contention that the scope of plaintiffs' appeal is limited to the issue of attorney fees and costs.

"Whether this Court has jurisdiction to hear an appeal is always within the scope of this Court's review." *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009). We review de novo issues regarding the scope of this Court's jurisdiction. *In re McCarrick/Lamoreaux*, 307 Mich App 436, 445; 861 NW2d 303 (2014). Questions involving the interpretation of statutes or court rules are also reviewed de novo. *Bint v Doe*, 274 Mich App 232, 234; 732 NW2d 156 (2007).

---

[5] The parties and the trial court cited MCR 2.114 rather than MCR 1.109(E), and on appeal, the parties continue to cite MCR 2.114. However, effective September 1, 2018, the provisions of MCR 2.114 regarding the effect of signatures and sanctions for frivolous claims were incorporated into MCR 1.109(E). Because MCR 1.109(E) was in effect in October 2018 when the trial court awarded sanctions, we refer to this provision on appeal. See *Pioneer State Mut Ins Co v Michalek*, ___ Mich App ___, ___ n ___; ___ NW2d ___ (2019) (Docket No. 344567); slip op at 5 n 8.

[6] Judge Hulsing recused himself after he was named in an unrelated federal suit and the court administrator arranged for Van Essen to represent Judge Hulsing.

[7] The lower court proceedings in the current case were resolved before the State Bar Association reached a decision on Van Essen's report about Huff. In a letter dated August 9, 2019, which does not appear in the lower court record, the State Bar closed the matter regarding Huff. Without elaboration or legal analysis, the letter indicated that Huff's conduct did "not appear to be a violation" of the unauthorized practice of law statute, MCL 600.916.

Under the court rules, this Court has jurisdiction over an appeal of right filed by a party aggrieved by a final judgment or final order of the circuit court. MCR 7.203(A)(1). In a civil case, a final judgment or final order means "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order." MCR 7.202(6)(a)(*i*). A final judgment or final order also includes "a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule." MCR 7.202(6)(a)(*iv*).

When appealing a final order, an appellant may generally challenge previous interlocutory orders. *Southfield Jeep, Inc v Preferred Auto Sales, Inc*, 477 Mich 1061; 728 NW2d 459 (2007). However, an appeal of a postjudgment order awarding attorney fees and costs "is limited to the portion of the order with respect to which there is an appeal of right." MCR 7.203(A). Moreover, there can be more than one final order in a case. *Maryland Cas Co v Allen*, 221 Mich App 26, 29; 561 NW2d 103 (1997). And "[w]hen a final order is entered, a claim of appeal from that order must be timely filed. A party cannot wait until the entry of a subsequent final order to untimely appeal an earlier final order." *Surman v Surman*, 277 Mich App 287, 294; 745 NW2d 802 (2007). For example, when a motion for summary disposition has been granted adjudicating the rights and liabilities of the parties, the order granting summary disposition is a final order notwithstanding postjudgment proceedings regarding the amount of sanctions. See *Baitinger v Brisson*, 230 Mich App 112, 116; 583 NW2d 481 (1998). Consequently, an aggrieved party cannot wait for a postjudgment determination of the amount of sanctions to appeal the summary disposition order. See *id*.

Applying these principles to the present case, Judge Hulsing's October 2, 2018 order, granting summary disposition to defendants, was a final order, appealable as of right. MCR 7.202(6)(a)(*i*); MCR 7.203(A)(1). An appeal of right must typically be taken within 21 days of the order, but plaintiffs filed a motion for reconsideration within that 21-day appeal period, thereby extending the time to appeal until 21 days after the denial of their motion for reconsideration. See MCR 7.204(A)(1)(a) and (b). Judge Hulsing denied plaintiffs' motion for reconsideration on October 22, 2018, meaning that the time for plaintiffs to appeal as of right the grant of summary disposition expired November 13, 2018.[8] Plaintiffs did not appeal within that time.

Instead, on June 27, 2019, plaintiffs filed an appeal of Judge Rossi's June 7, 2019, postjudgment orders awarding attorney fees and costs. Although Judge Rossi's orders are appealable as of right, see MCR 7.202(6)(a)(*iv*), the appeal of right is limited to the attorney fees and costs questions, see MCR 7.203(A). And plaintiffs cannot use an appeal from these orders as an attempt to untimely appeal the previous final order granting summary disposition. See *Surman*, 277 Mich App at 294; *Baitinger*, 230 Mich App at 116. In short, plaintiffs' challenges to the grant of summary disposition are outside the scope of their appeal of right from the postjudgment orders awarding attorney fees and costs. See MCR 7.202(6)(a)(*iv*); MCR 7.203(A).[9]

[8] Time would have expired on November 12, 2018, but it was a holiday. See MCR 1.108(1).

[9] One of Judge Rossi's June 7, 2019 orders also denied plaintiffs' postjudgment motion for relief from judgment under MCR 2.612. However, this fact does not permit plaintiffs to appeal the

Because the time for plaintiffs to appeal the October 2, 2018 summary disposition order passed without plaintiffs filing an appeal of right, plaintiffs' ability to appeal this order is limited to an application for leave to appeal. See MCR 7.203(B)(5). Yet, plaintiffs have not sought leave to appeal. When it is determined that an appellant lacks an appeal of right or that an appellant has raised issues outside the scope of appeal of right, depending on the circumstances, this Court may exercise its discretion to consider issues as on leave granted. See *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012). However, this Court's discretion to consider an issue as on leave granted is limited by the six-month period in MCR 7.205(G)(3). That is, relevant to this case, under MCR 7.205(G)(3)(a), "leave to appeal may not be granted if an application for leave to appeal is filed more than 6 months" after entry of an order denying a motion for reconsideration that was filed within the initial 21-day appeal period.[10] See also MCR 7.204(A)(1)(b).

In this case, the six-month period began to run on October 22, 2018, i.e., the date that Judge Hulsing denied plaintiffs' motion for reconsideration, which had been filed within the initial 21-day appeal period. See MCR 7.204(A)(1)(b); MCR 7.205(G)(3)(a). Plaintiffs did not file an appeal until June 27, 2019, well after the time to file a late application for leave to appeal had expired. In these circumstances, plaintiffs' appeal is untimely and we will not consider plaintiffs' untimely appeal as on leave granted. See MCR 7.205(G)(3); *Chen*, 284 Mich App at 193, 199. Our review is limited to the question of sanctions.[11] See MCR 7.202(6)(a)(*iv*); MCR 7.203(A).

III. SANCTIONS

On appeal, plaintiffs contend that they stated viable claims for tortious interference and civil conspiracy. They maintain that these claims were brought in good faith and that sanctions were particularly unwarranted given that Huff's ability to act as an authorized representative poses an issue of first impression in Michigan. Additionally, plaintiffs argue that Judge Rossi erred by awarding Coleman-Ax and Brown reasonable attorney fees rather than actual attorney fees. We disagree.

---

summary disposition orders as of right at this time. Plaintiffs filed their postjudgment motion for relief on December 20, 2018, outside the 21-day appeal period, meaning that this motion did not extend the time for appealing the October 2, 2018 order granting summary disposition as of right. See MCR 7.204(A)(1)(a) and (b). See also *Allied Elec Supply Co, Inc v Tenaglia*, 461 Mich 285, 289; 602 NW2d 572 (1999).

[10] There are exceptions to this rule in MCR 7.205(G)(4) and (5), neither of which apply in this case.

[11] Although we conclude that our review is limited to the issue of sanctions, we disagree with Coleman-Ax and Brown's suggestion that plaintiffs' appeal of right is limited to the *amount* of sanctions. An appeal of right of a final order setting the amount of attorney fees and costs also encompasses the propriety of sanctions, even if the motion for sanctions was granted in a previous order. See *In re Estate of Hemminger*, 463 Mich 941 (2000); *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 165; 712 NW2d 731 (2005).

"This Court reviews for a clear error a trial court's decision regarding sanctions based on frivolous pleadings or claims." *Home-Owners Ins Co v Andriacchi*, 320 Mich App 52, 75; 903 NW2d 197 (2017). "A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *Id*. at 75-76 (quotation marks and citation omitted). The amount of sanctions imposed is reviewed for an abuse of discretion. *BJ's & Sons Const Co, Inc v Van Sickle*, 266 Mich App 400, 410; 700 NW2d 432 (2005).

A. AWARD OF SANCTIONS

Judge Hulsing determined that sanctions were warranted under MCR 1.109(E), which states:

> (5) *Effect of Signature*. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
>
> (a) he or she has read the document;
>
> (b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, 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
>
> (c) 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.
>
> (6) *Sanctions for Violation*. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.
>
> (7) *Sanctions for Frivolous Claims and Defenses*. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages. [MCR 1.109(E).]

Judge Hulsing also determined that sanctions were warranted under MCL 600.2591:

> (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.

> (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. [MCL 600.2591.]

The purpose of awarding sanctions under MCR 1.109(E) and MCL 600.2591 is to deter frivolous claims and defenses. See *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 714 n 1; 591 NW2d 676 (1998). Under MCR 1.109(E)(5), "an attorney is under an affirmative duty to conduct a reasonable inquiry into both the factual and legal basis of a document before it is signed." *Kelsey v Lint*, 322 Mich App 364, 379; 912 NW2d 862 (2017) (quotation marks and citation omitted). "The reasonableness of the inquiry is determined by an objective standard and depends on the particular facts and circumstances of the case." *Id*. (quotation marks and citation omitted). Filing a signed document that is not well grounded in fact and law subjects the filer to sanctions under MCR 1.109(E)(6); these sanctions are mandatory. *Id*. at 379-380.

Likewise, under MCR 1.109(E)(7) and MCL 600.2591, filing of frivolous claims warrants sanctions. "A court may find that a party's action is frivolous if (1) the party initiated the suit for purposes of harassment, (2) '[t]he party's legal position was devoid of arguable legal merit,' or (3) '[t]he party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.' " *Ford Motor Co v Dep't of Treasury*, 313 Mich App 572, 589; 884 NW2d 587 (2015), quoting MCL 600.2591(3)(a). However, a claim is not frivolous merely because a party does not prevail. *Id*. And a lack of clear appellate law can provide a good-faith basis for bringing a claim. *Fette v Peters Const Co*, 310 Mich App 535, 551; 871 NW2d 877 (2015). "A court must determine whether a claim or defense is frivolous on the basis of the circumstances at the time it was asserted." *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 732; 909 NW2d 890 (2017).

In finding sanctions appropriate in this case under MCL 600.2591 and MCR 1.109(E), Judge Hulsing reasoned:

> As explained *supra*, plaintiffs have not stated a cause of action. It is painfully obvious that plaintiffs simply have an axe to grind with defendants because of perceived affronts to their business. The Court finds that this second amended complaint is simply vindictive and was filed to harass defendants. It is basic, longstanding, and unmistakably evident precedent that plaintiffs could not rely on an alleged legal conclusion in attempting to state a claim that would survive a MCR 2.l 16(C)(7) or (C)(8) motion.
>
> In sum, each of the claims against defendants are frivolous because they are devoid of arguable legal merit, and because defendants "win[] on the entire record" as discussed above. Defendants are entitled to costs and reasonable attorney fees pursuant to MCL 600.2591. Pursuant to MCL 600.2591(1), these costs and reasonable attorney fees shall be assessed against plaintiffs as the "nonprevailing part[ies]" and against plaintiffs' attorney.
>
> Regarding whether defendants are also entitled to costs and reasonable fees under [MCR 1.109(E)(6)], this Court concludes that plaintiffs' counsel did not

> make a reasonable inquiry into the factual and legal viability of the second amended complaint. At the center of plaintiffs' claims is their allegation that defendants *knew for a fact* that Van Essen's legal opinion in his August 29, 2017 letter to Huff was incorrect. But, as explained above, it would have been impossible for any individual (attorney or lay person) to know with *factual certainty* that any one legal position regarding plaintiffs' ability to serve as "authorized representatives" without exposure to liability for the unauthorized practice of law was legally correct. Plaintiffs have one position on this issue and Van Essen has another, but this issue has not been resolved by the courts of the State of Michigan. And, again, plaintiffs cannot compensate for this gaping hole in the middle of their arguments by simply alleging a favorable legal conclusion as a part of their second amended complaint. Thus, based on an objective standard and on the particular facts and circumstances of the case, this Court finds that plaintiffs' counsel's inquiry into plaintiffs' claims prior to the filing of the second amended complaint was unreasonable. Defendants are also entitled to costs and attorney fees pursuant to [MCR 1.109(E)(5) and (6)] regarding plaintiffs' second amended complaint. Pursuant to [MCR 1.109(E)(6)], these costs and reasonable attorney fees shall be assessed against plaintiffs ("a represented party") and plaintiffs' attorney ("the person who signed" the second amended complaint).
>
> * * *
>
> In its initial Opinion, the Court made it clear that the initial complaint was entirely meritless. Instead of letting reason reign, plaintiffs have now submitted a *third* iteration of a meritless claim. This is precisely the situation for which the aforementioned statutes and court rules were created.

Judge Hulsing's findings of fact are not clearly erroneous and his reasons for awarding sanctions under MCL 600.2591 and MCR 1.109(E) are sound. Plaintiffs contend that Doyle, Coleman-Ax, and Brown may be held liable under theories of tortious interference and civil conspiracy because they failed to contradict Van Essen's legal opinion and to somehow countermand his report to the State Bar. Such claims are wholly devoid of legal merit.

Indeed, despite three iterations of their complaint, the basis for plaintiffs' tortious interference claim is frankly baffling.[12] The crux of plaintiffs' claims is that there is no merit to Van Essen's opinion—an opinion on what plaintiffs acknowledge to be an issue of first impression

---

[12] The elements of tortious interference with a business relationship or expectancy are as follows:

> (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy by the interferer, (3) an intentional and wrongful interference inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the party whose relationship or expectancy was disrupted. [*PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 148; 715 NW2d 398 (2006).]

in Michigan—that Huff engaged in the unauthorized practice of law by representing consumers at Medicaid fair hearings. But, whether groundless or not, a report to the State Bar is not the type of wrongful conduct that would support a claim for tortious interference.[13] Cf. *Dalley v Dykema Gossett*, 287 Mich App 296, 324; 788 NW2d 679 (2010) ("There is nothing illegal, unethical or fraudulent in filing a lawsuit, whether groundless or not.") (quotation marks and citation omitted). And plaintiffs' claims of wrongful conduct—that Doyle, Coleman-Ax, and Brown failed to contradict Van Essen's opinions—are even more attenuated. Doyle, Brown, and Coleman-Ax had no obligation to countermand Van Essen's report to the State Bar, and their mere omissions do not demonstrate intentional conduct or affirmative acts done with malice and without justification as required to support a claim for tortious interference. *Mino v Clio Sch Dist*, 255 Mich App 60, 78-79; 661 NW2d 586 (2003); see also Restatement (Second) of Torts § 766C (1979) (noting that "there has been no general recognition of any liability for a negligent interference").

Additionally, plaintiffs completely fail to explain how sharing this information interfered with a business relationship or expectancy. There is no allegation that Doyle shared Van Essen's letter with plaintiffs' clients, that she endorsed Van Essen's opinions, or that she in any way counseled anyone not to use Huff's services or prevented Huff from acting as an authorized representative at Medicaid fair hearings. Indeed, it is readily apparent from the allegations in plaintiffs' complaint that Huff continued to represent clients at Medicaid fair hearings, and from the allegations regarding Doyle's letter to a consumer's parent, it is clear that, pending the State Bar's investigation, CMHOC remained willing to communicate with Huff on matters pertaining to Medicaid fair hearings. At most, in attempting to plead damage to a business relationship or expectancy, plaintiffs assert that some unspecified clients or potential clients—none of whom were recipients of Doyle's e-mail forwarding Van Essen's letter—were somehow left with the impression that Huff was engaged in the unauthorized practice of law or other unethical conduct. But these conclusory and vague allegations are far from sufficient to plead a claim that action by Doyle, Coleman-Ax, or Brown damaged a business relationship or expectancy that had a reasonable likelihood of fruition. See *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 150; 715 NW2d 398 (2006). Plaintiffs' tortious interference claim is wholly devoid of any merit, and absent a viable claim for tortious interference, plaintiffs' claim for civil conspiracy premised on tortious interference is equally frivolous. See *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003), aff'd 472 Mich 91 (2005).

---

[13] Indeed, as an attorney, Van Essen had an ethical obligation not to assist in the practice of law "in violation of the regulation of the legal profession" in Michigan. MRPC 5.5(a). And, if it is unclear whether someone is engaged in the unauthorized practice of law, this obligation can be fulfilled by reporting the incident to the State Bar and leaving it to the Unauthorized Practice of Law Committee to investigate and prosecute the matter in their discretion. See State Bar of Michigan Standing Committee on Professional and Judicial Ethics, Opinion No. C-239, issued September 3, 1986, available at <https://www.michbar.org/opinions/ethics/numbered_opinions/C-239> (accessed May 13, 2020).

Even more troublesome, and a clear indication that sanctions were warranted in this case, after Judge Hulsing granted summary disposition to defendants in June 2018—(1) detailing over 26 pages the numerous flaws in plaintiffs' initial complaint, (2) making clear that Van Essen's report to the State Bar was not actionable, and (3) reminding plaintiffs of the possibility of sanctions—plaintiffs persisted in pursuing their glaringly meritless claims by filing a third iteration of their groundless complaint. Given these facts, Judge Hulsing did not clearly err in determining that the filing of this frivolous second amended complaint warranted sanctions under MCL 600.2591 and MCR 1.109(E)(6) and (7).

In contrast, plaintiffs contend on appeal that sanctions were unwarranted because the case involves an issue of first impression regarding whether Huff may legally act as an authorized representative. Plaintiffs are mistaken. Van Essen's report to the State Bar may have involved an issue of first impression.[14] However, the fact that Huff's ability to act as an authorized representative posed a potentially novel legal question—a question that took the State Bar two years to resolve—only underscores the irrationality of plaintiffs' contention that Doyle, Brown, and Coleman-Ax—particularly as nonlawyers—should have taken it upon themselves to dispute Van Essen's legal opinions and somehow countermand his report to the State Bar. On this record, Judge Hulsing did not clearly err by concluding that plaintiffs, affronted by Van Essen's report to the State Bar, acted vindictively in pursuing their patently meritless claims against Doyle, Brown, and Coleman-Ax by filing their second amended complaint. For these reasons, Judge Hulsing did not clearly err in awarding sanctions under MCL 600.2591 and MCR 1.109(E)(6) and (7).

B. AMOUNT OF SANCTIONS

Finally, on appeal, plaintiffs also assert that Judge Rossi erred in the amount of sanctions he awarded to Coleman-Ax and Brown.[15] However, in contesting this award, plaintiffs do not

---

[14] Although Van Essen's report to the State Bar provided the catalyst for plaintiffs' current lawsuit, the propriety of Van Essen's opinions—and the correctness of the State Bar's decision—is not before us on appeal. For purposes of whether plaintiffs stated a claim, the issue was not whether Van Essen was ultimately correct in his opinions; the actual issue is simply whether Doyle, Brown, and Coleman-Ax tortuously interfered with plaintiffs' business relationships or expectancies by failing to contradict Van Essen's opinions. The answer to this is no. We, therefore, find it unnecessary to address plaintiffs' assertion that Huff may act as an authorized representative at Medicaid fair hearings. Indeed, we also note that plaintiffs have abandoned the question by failing to adequately brief the issue and instead merely referring us to legal citations in lower court documents. See *Ile v Foremost Ins Co*, 293 Mich App 309, 328; 809 NW2d 617 (2011) (concluding that the appellant's "lazy and sloppy effort" to incorporate other arguments by reference was an "unacceptable" method of briefing an issue), rev'd on other grounds 493 Mich 915 (2012); *State Treasurer v Sprague*, 284 Mich App 235, 243; 772 NW2d 452 (2009) ("Failure to brief a question on appeal is tantamount to abandoning it.").

[15] Plaintiffs do not dispute the propriety of the $900 awarded to Doyle, and in fact, plaintiffs' counsel waived any challenge to the amount awarded to Doyle by affirmatively stating at a hearing before Judge Rossi that he had "no objection." See *Nexteer Auto Corp v Mando America Corp*,

challenge the number of hours expended by the attorneys, nor do plaintiffs appear to dispute that the hourly rate represented a reasonable rate. Plaintiffs' sole argument appears to be that only actual attorney fees should have been awarded because awarding reasonable attorney fees—premised on a survey of attorney rates—resulted in a windfall for the risk management pool that paid for Coleman-Ax and Brown's defense. This argument lacks merit for the simple reason that MCR 1.109(E) and MCL 600.2591 allow for an award of reasonable attorney fees, which contrary to plaintiffs' arguments, does not necessarily equate with actual attorney fees. See *Zdrojewski v Murphy*, 254 Mich App 50, 72; 657 NW2d 721 (2002) ("Reasonable fees are not equivalent to actual fees charged."); *Cleary v Turning Point*, 203 Mich App 208, 212; 512 NW2d 9 (1993) ("[T]he trial court did not abuse its discretion in awarding defendant attorney fees calculated at an hourly rate higher than the hourly rate that defendant was charged by defense counsel.").[16]

More fully, in the context of attorney fees awarded as sanctions for frivolous filings, this Court has explained:

> To evaluate whether an attorney fee is reasonable, courts begin by determining the fee customarily charged in the locality for similar legal services. To determine this amount, courts should use reliable surveys or other credible evidence of the legal market. Then, the reasonable hourly rate should be multiplied by the number of hours that were reasonably expended to reach a baseline figure for a reasonable attorney fee. [*Ford Motor Co*, 313 Mich App at 591 (quotation marks and citations omitted).]

From this baseline figure, courts may then make upward or downward adjustments depending on a variety of factors articulated in *Smith v Khouri*, 481 Mich 519, 530; 751 NW2d 472 (2008). An award of attorney fees should not produce a windfall. *Id*. at 528. "Rather, it only permits an award of a *reasonable* fee, i.e., a fee similar to that customarily charged in the locality for similar legal services, which, of course, may differ from the actual fee charged or the highest rate the attorney might otherwise command." *Id*. Often cases involving a deviation from actual attorney fees involve a decrease of an attorney's rates, see, e.g., *id*., but this Court's caselaw also makes clear that a trial court does not necessarily abuse its discretion by awarding attorney fees "calculated at an hourly rate higher than the hourly rate that defendant was charged by defense counsel." *Cleary*, 203 Mich App at 212.

In this case, Coleman-Ax and Brown sought $13,642.50 in attorney fees and $130.40 in costs. The attorney fees consisted of 18.9 hours at a rate of $325 per hour for attorney Allan C.

---

314 Mich App 391, 395; 886 NW2d 906 (2016) ("An affirmative expression of assent constitutes a waiver.").

[16] *Clearly* and *Zdrojewski* involved case evaluation sanctions under MCR 2.403(O). However, the same basic framework for determining "reasonable" attorney fees also applies to other fee-shifting provisions, see *Kennedy v Robert Lee Auto Sales*, 313 Mich App 277, 285; 882 NW2d 563 (2015), including attorney fees awarded as sanctions under MCL 600.2591 and MCR 2.114 (now MCR 1.109(E)), see *id*. at 293; see, e.g., *Ford Motor Co*, 313 Mich App at 591.

VanderLaan ($6,142.50) and 25 hours at a rate of $300 per hour for attorney Douglas J. Curlew ($7,500). This request was supported with invoices detailing the hours expended, an affidavit from VanderLaan, information about the attorneys' experience and the details of the case, and data from the Michigan State Bar's 2017 Economics of Law and Practice Survey regarding the fees customarily charged. Reviewing this information and considering the relevant factors, Judge Rossi found the rate reasonable in light of the rate customarily charged in that locality, the particular attorneys' and their firm's experience and reputation, the complexity of the case, and the result obtained. Finding the rate reasonable and the hours reasonable, Judge Rossi approved the total amount sought. Given the information provided by Coleman-Ax and Brown, Judge Rossi did not err in determining that the rate sought was reasonable. And, although the rate may be higher than the attorneys would otherwise receive from the insurance risk pool,[17] this does not render the rate set by Judge Rossi unreasonable given the attorneys' experience, the complexity of the case, the result obtained, and what is customarily charged in the locality. See *id*. The $13,642.50 awarded as reasonable attorney fees was not an abuse of discretion, and plaintiffs are not entitled to relief on appeal.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ Deborah A. Servitto

---

[17] Plaintiffs also emphasize that Coleman-Ax and Brown did not have to personally pay out of pocket for their defense, but this fact does not preclude an award of attorney fees. See *BJ's & Sons Const Co, Inc*, 266 Mich App at 409.