# STATE OF MICHIGAN

# COURT OF APPEALS

CODY HEASLEY,

Plaintiff-Appellant,

v

BARBARA TSATUROVA, LAW OFFICE OF BARBARA TSATUROVA PLLC, AND HOLLAND COMMUNITY HOSPITAL doing business as HOLLAND HOSPITAL

Defendants-Appellees.

UNPUBLISHED
September 10, 2020

Nos. 349236 & 349239
Ottawa Circuit Court
LC No. 18-005519-CZ

Before: REDFORD, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In Docket No. 349236, plaintiff, Cody Heasley, appeals by delayed leave granted[1] the trial court order granting defendants' motion for summary disposition under MCR 2.116(C)(6). In Docket No. 349239, Heasley appeals by right the trial court order granting defendants attorney fees and costs as sanctions for Heasley filing a frivolous claim. For the reasons stated in this opinion, we affirm in both cases.

## I. BASIC FACTS

On April 18, 2018, Holland Community Hospital, through its lawyers, the Law Office of Barbara Tsaturova, PLLC, sued Heasley because Heasley had not paid for the goods and services he had received from the Hospital. The April 2018 complaint was filed in Allegan County, and for ease of reference, will be referred to as the Allegan case. On July 19, 2018, along with an answer and affirmative defenses, Heasley filed counterclaims against the Hospital. The counterclaims were made under the Fair Debt Collection Practices Act (FDCPA), 15 USC 1692 *et*

[1] *Heasley v Tsaturova*, unpublished order of the Court of Appeals, entered October 7, 2019 (Docket No. 349236).

*seq.*, and Michigan's regulation of collection practices act (MRCPA), MCL 445.251 *et seq*. On July 20, 2018, Heasley filed the same counterclaims against the Tsaturova Law Office.

The Hospital filed two motions for summary disposition. In response, Heasley moved to strike several exhibits that were attached to the summary-disposition motions. Heasley asserted that the exhibits included his name, date of birth, account number, admission and discharge dates, the names of his attending physicians, and examples of procedures and services that he received. According to Heasley, the inclusion of this information in the public filings violated the Health Insurance Portability and Accountability Act (HIPAA), his common-law and statutory right to privacy, and the physician-patient privilege. Heasley requested that the Hospital and the Tsaturova Law Office be sanctioned.

At the September 24, 2018 hearing on the motion, the Allegan court orally denied the motion to strike, stating in relevant part:

> Well as I indicated I've reviewed all the pleadings and done some research also with respect to HIPAA and what's allowed . . . .
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> And in reviewing this motion the Court also reviewed the case law and—that's related to HIPAA because HIPAA is certainly a part of this determination and what is considered private information, private health information. And in looking at the case law and the statute I've learned that HIPAA does provide for many situations where private health information can be used and disclosed. And it includes litigation on a collections matter, which is exactly the situation that we have here.
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> HIPAA requires that the disclosures are kept to the minimum necessary to accomplish the intended purpose. And the Court feels that in this case the private health information that has been disclosed by the Hospital does comply with that requirement to keep it to a minimum.
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> The exhibits have to be submitted to prove that there's a financial claim against the Defendant. Including his identifying information, name, date of birth, things of that nature, the treating physicians, the procedures. Also, has to be included because the Court has to decide whether or not, or the trier of fact, will have to decide whether or not there's support for the facts that the money is owed to the Hospital for the services rendered.
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> In fact, the Court feels that if the information wasn't included the Defendant could then argue that there's an insufficiency of a claim because there's no concrete evidence of the—of the debt.
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> And the Court also feels that the information that's been disclosed is not impertinent, scandalous, or indecent under the court rule. And for all those reasons the motion to strike is denied.

A written order reflecting the court's ruling was entered on October 10, 2018 order.[2]

On September 26, 2018—two days after the Allegan court's oral order denying his motion to strike—Heasley filed a complaint against the Hospital, the Tsaturova Law Office, and Barbara Tsaturova in Ottawa Circuit Court. Heasley stated that he had been sued in Allegan County by the Hospital for collection of a debt, and he alleged that in the Allegan case, defendants attached exhibits to the motions for summary disposition that included "sensitive and confidential personal identifying and medical information." This protected health information included his name, date of birth, account number, admission and discharge dates, the names of his attending physicians, and examples of procedures and services he received. In Count I of the complaint, Heasley asserted that the Hospital, when it provided this protected health information to the Tsaturova Law Office and when it authorized the Tsaturova Law Office to file the exhibits with the motions for summary disposition, violated the physician-patient privilege. In Count II, Heasley asserted that the Hospital, because of this alleged conduct, breached its duty of care to him. In Counts III and IV, Heasley asserted that defendants violated the FDCPA and the MRCPA, respectively, when they publicly disclosed his protected health information. In Counts V and VI, Heasley asserted that defendants violated his right to privacy and committed an abuse of process when they disclosed his protected health information. In addition to requesting damages, Heasley requested that the Ottawa Circuit Court order "the removal of all private information placed by one or more of the Defendants into the Allegan County Circuit Court's public records."

Meanwhile, on October 29, 2018, the Allegan court heard oral argument on the motion requesting summary dismissal of Heasley's counterclaims against the Hospital, Tsaturova, and the Tsaturova law office. At the hearing, the court orally granted the Hospital's motion for summary disposition under MCR 2.116(C)(8), noting that "there's no claim upon which relief can be granted against Holland Hospital because it is not a debt collector under the FDCPA or a regulated person under the MRPCA." The court also held that any amendment of the counterclaim under MCR 2.118(A) would be futile, so it denied leave to amend. As it related to Tsaturova and the Tsaturova law office, the court orally held that it was granting summary disposition under MCR 2.116(C)(10), noting that "[e]ven looking at it in a light most favorable to Mr. Heasley it appears from what the Court has considered that all the allegations are very general" and that they had not been supported with "specific factual allegations of how" the Law Office and Tsaturova engaged in prohibited collection activities. However, the court granted Heasley leave to amend his counterclaim to add "very specific" details "as to how exactly" the Law Office and Tsaturova violated the FDCPA and/or the MRPCA. Presumably a written order was entered reflecting the trial court's ruling, but that order is not included in the lower court record in the Ottawa case.

On October 29, 2018, the Hospital moved for summary disposition in the Ottawa case under MCR 2.116(C)(6). The Tsaturova Law Firm and Tsaturova concurred in the Hospital's motion.

[2] We note that, one day after the court entered its order, the court entered a stipulation and order that removed the challenged exhibit and replaced it with a redacted version of the exhibit. The stipulated order provided that the original exhibit was to be destroyed.

At the November 26, 2018 hearing on the Hospital's motion, the Ottawa court orally granted defendants' motion for summary disposition, reasoning:

> The Court Rule 2.116(C)(6) is the codification of the principle of abatement by prior action which, simply put, provides that the pendency of a prior suit for the same thing or as is commonly said for the same cause of action between the same parties in a court of competent jurisdiction will abate a later suit because the law abhors multiplicity of suits. This is a 1916 case. Abatement by prior action has been a well settled principle of law for over 150 years.
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> In the 19th century the Michigan Supreme Court found it to be a familiar principle that when a court of competent jurisdiction has become possessed of a case, its authority continues subject only to the appellate authority until the matter is finally and completely disposed of and no court of coordinate authority is at liberty to interfere with its action. This is an 1884 case. It seems to me quite obvious that the request for injunctive relief is asking me to directly interfere with the decisions of the Allegan County Circuit Court. The Court further noted that this principle is essential to the proper and orderly administration of the laws, judicial comity, and courtesy and to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and in process. It seems to be what we have here.
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> * * *
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> This is a frivolous case. This is outrageous. This case is asking me to really *undo the decisions* of the Allegan County Circuit Court it arises out of. And in the course of the litigation *that occurred in Allegan County*, plaintiff objects to evidentiary rulings made by the trial court and objects to pleadings filed by the defendants in that case. I think there's some litigation privilege as well that parties have the right to, in good faith, file motions that the other side may not like. Generally speaking, you can't then use that action to sue in a -- certainly in another court involving the same underlying facts.
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> This is all related to medical records. The counterclaims that were filed in Allegan County are pretty identical as far as the nature of the actions that they're claiming that the defendants here disclosed some personal information in the filing of the lawsuit down in Allegan County. Okay. And then also when they filed their motion down in Allegan County, they're alleging that once again there was another disclosure improper, so they're now suing in Ottawa County for a motion that was filed in the Allegan County Circuit Court and they lost their motion to strike so now they sue in Ottawa. No way. No. Way. . . . And this is a frivolous case. Frivolous. Period. I've never seen a more frivolous case ever filed in court. . . .
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> * * *
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> So I'm going to retain this case for the purposes of establishing the amount of the attorney fees that you or that you owe [defendants].

Thereafter, on December 6, 2018, a written order reflecting the court's ruling was entered.

Heasley moved for reconsideration; however, the Ottawa Court struck pages 2 through 9 of Heasley's brief because the brief did not comply with MCR 2.119(A)(2)(a). Thereafter, on January 21, 2019, the Ottawa court issued a supplemental opinion and order on the Hospital's motion for summary disposition "to further attempt to disabuse [Heasley] of the notion that his complaint is anything more than frivolous." In the supplemental opinion and order, after summarizing the history of the Allegan case and the Ottawa case, the court held:

> Plaintiff is attempting to use the resources of *two* circuit courts to resolve this single debt collection action with associated counterclaims. This is entirely improper.
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> In his brief in response to the motion for summary disposition, plaintiff claimed that he was precluded from filing an amended counter-claim because the "window for filing counterclaims had already closed in Allegan County." This statement reflects plaintiff's lack of understanding of the court rules. In that plaintiff complains of actions arising after he filed his answer and counterclaims, he could have moved under MCR 2.118(A)(2) to amend his counterclaims to add the new theories. As the court rule states, "leave shall be freely given when justice so requires."
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> The upshot of this discussion is that it is evidence that all of these matters, both the Allegan and Ottawa cases, arise out of the same debt collection activities in which Holland Hospital, and its counsel, are attempting to recover fees for services that it allegedly provided to plaintiff. Plaintiff is crying "foul" and counters that Holland Hospital, and its counsel, have engaged in inappropriate collection methods. Perhaps plaintiff is correct. But, those claims must be filed in the Allegan County case because all of these matters are related. The court actions taken by Holland Hospital in the Allegan case are a continuous transaction of the matters for which it filed suit and demands relief. That Holland Hospital filed a motion does not, by itself, create a new transaction or occurrence independent of the Allegan case. Rather, the filings are part of, and must be incorporated in the original action.
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> Pursuant to MCR 2.116(C), it is a decision of the court, not the jury, to determine if there is sufficient evidence to warrant presenting a case to a jury. [The Allegan court] noted that in the *absence* of the exhibits filed by Holland Hospital in its motion for summary disposition, that its claims in the Allegan case may not have survived a motion for summary disposition. Thus, [the Allegan court] found it *necessary* that the exhibits were supplied to him. Those necessary exhibits contained information which was essential to Holland Hospital's case. Given [the Allegan court's] decision, the timing of the filing of the current case, the requested relief, the complained of disclosed information is identical to the motion to strike filed in Allegan, it becomes evident that plaintiff is forum shopping in an attempt to reverse [the Allegan court].
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> * * *

> It is true that [Heasley] makes a new claim of breach of the doctor-patient privilege in count I. However, any breach of this privilege would have occurred before the filing of defendants' motion and must be raised as a counterclaim in the Allegan case. In any event, it is part of the factual underpinnings of the Allegan case. In count II, plaintiff alleges a breach of the "duty of care." There is no substance to this count and it is clear that it simply refers to the disclosure of protected medical information which is addressed in counts I, III and IV. Counts V and VI are likewise simply related to the release of the protected information and also are closely intertwined with counts III and IV, theories which were also raised in the Allegan case. That plaintiff labels these counts as "new" is not binding on this Court. . . . The gravamen of this action is a single collection action, with associated counterclaims, which currently is before [the judge] in Allegan County.
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> One must ask why this complaint, which is obviously part and parcel of the Allegan case, was filed in Ottawa County? This answer is obvious. It was to forum shop and harass defendants. [Heasley] was unhappy with the evidentiary ruling by [the Allegan court] and is attempting to inflict financial pain on defendants by requiring them to address claims in two counties.

In a May 16, 2019 order, the Ottawa court awarded the Hospital $26,363 in attorney fees and $2,829.08 in costs. Tsaturova was awarded attorney fees in the amount of $1,581.75 and $34 in costs. On June 4, 2019, judgment was entered against Heasley and his lawyer in accordance with those amounts.

## II. SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

Heasley argues that the trial court erred by granting summary disposition under MCR 2.116(C)(6). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Gyarmati v Bielfield*, 245 Mich App 602, 604; 629 NW2d 93 (2001). When deciding whether summary disposition is proper under MCR 2.116(C)(6), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5).

### B. ANALYSIS

MCR 2.116(C)(6) provides that summary disposition is appropriate when "[a]nother action has been initiated between the same parties involving the same claim." This subrule "is a codification of the former plea of abatement by prior action," which had the purpose "to protect parties from the harassment of new suits." *Valeo Switches & Detection Sys, Inc v Emcom, Inc*, 272 Mich App 309, 313; 725 NW2d 364 (2006). The "purpose of the rule is to preclude repetitive and harassing re-litigation of the same matter already at issue in pending litigation." *Fast Air, Inc v Knight*, 235 Mich App 541, 545-546; 599 NW2d 489 (1999).

Heasley contends that the Allegan case was no longer "pending" at the time that the court granted summary disposition under MCR 2.116(C)(6). In support, he directs this Court to the October 29, 2018 motion hearing where the Allegan court orally granted defendants' summary

disposition. At that hearing, the Allegan court orally dismissed at least some of Heasley's counterclaims against the Hospital under MCR 2.116(C)(8) and that it denied leave to amend the dismissed claims against the Hospital. In addition, the court granted summary disposition to the Tsaturova Law Office under MCR 2.116(C)(10). The court permitted the Tsaturova Law Office leave to amend. As correctly recognized by Heasley, "summary disposition cannot be granted under MCR 2.116(C)(6) unless there is another action between the same parties involving the same claims currently initiated and *pending at the time of the decision regarding the motion for summary disposition*." *Fast Air*, 235 Mich App at 549 (emphasis added).

Yet, even after the October ruling, the Allegan case remained pending, and it was not resolved until March 26, 2019. At that time, the Allegan court entered a final consent judgment that dismissed with prejudice Heasley's counterclaims against defendants, noting that the claims had been withdrawn with the consent of all the parties.[3] The judgment also indicates that all pending motions were withdrawn by consent and ordered Heasley to pay the Hospital $33,498.12. Given the March order, it is apparent that the Hospital's claims in the Allegan case remained pending after the October 29, 2018 hearing, as did at least some of Heasley's counterclaims against both the Hospital and the Tsaturova Law Office. Heasley's argument that the Allegan case was no longer pending is, therefore, wholly without merit.

Next, Heasley argues that the Allegan case and the Ottawa case do not involve "the same claim." He asserts that his counterclaims in the Allegan case involved substantive and procedural defects in the Hospital's April 2018 complaint, whereas his claims in the Ottawa case relate to defendants' intentional and needless release of private and confidential medical information during the pendency of the Allegan case. He stresses that the claims cannot be "the same" because his claims in the Ottawa case did not even exist until approximately one month after he filed his counterclaims in the Allegan case. The fact that there are differences between the claims, however, does not conclusively establish that the claims are not the "same" under MCR 2.116(C)(6).

"MCR 2.116(C)(6) does not require that all the parties and all the issues be identical." *Fast Air, Inc*, 235 Mich App at 545 n 1. "The two suits only have to be based on the same or substantially the same cause of action." *Id*. (quotation marks and citation omitted). A motion based on MCR 2.116(C)(6) is properly granted where resolution of the action will require examination of the same operative facts as the pending action. *JD Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 601; 386 NW2d 605 (1986). Here, the claims in the Ottawa case can only fairly be described as being based on the same or substantially the same cause of action as the Allegan case. The challenged exhibits were essential to the Allegan case because, as the Allegan court ruled in response to the motion to strike, the plaintiffs in the Allegan case could not prove that the amount was due and owing by Heasley without the inclusion of the exhibits. In other words, the claims in this case flow directly and naturally from the Hospital's attempt to collect money due and owing in the Allegan case. Further demonstrating that the two cases involve

[3] Although a copy of the final order in the Allegan case was not provided to the trial court in this case, we take judicial notice of it. See MRE 201(b)(2) (permitting judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

the same or substantially the same claim is the fact that the same legal arguments were used in both cases. In the Allegan case, Heasley argued in a motion to strike that the challenged exhibits violated his common law and statutory right to privacy and the physician-patient privilege. In his complaint in the Ottawa case, he made the same claims. In part, he also sought the same relief in both cases, namely that the exhibits be stricken from the record in the Allegan case.

Next, Heasley also contends that the claims are not the same because a judgment in one case would not resolve the other case. He directs this Court to 1 Am Jur 2d Abatement, Survival, and Revival § 28, which provides that when evaluating the plea of abatement by prior action "[t]he ultimate inquiry is whether a judgment in the first action, if one is rendered, will be conclusive on the parties with respect to the matters involved in the second." MCR 2.116(C)(6) is the codification of the plea of abatement by a prior action; however, nothing in the court rule states that the "ultimate" inquiry will be whether resolution of one case will conclusively resolve the second case. Because we are tasked with interpreting and applying the court rule, not applying the common law plea of abatement by prior action, we find Heasley's reliance on the treatise misplaced.

Furthermore, even if it were applicable summary disposition was still warranted under MCR 2.116(C)(6) because if Heasley had moved under MCR 2.118(B) for leave to amend his counterclaims in the Allegan case and leave was granted to permit the additional claims arising from the same operative body of facts and involving the same parties, then one judgment would resolve all the claims. Stated differently, the claims in the Ottawa case could have been raised in the Allegan case.

On appeal, Heasley makes much of the fact that, under MCR 2.203(A), he was required to "join every claim" that he had against defendants "at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action . . . ." MCR 2.203(E), however, also provides that "[a] counterclaim . . . must be filed with the answer or filed as an amendment in the manner provided by MCR 2.118." Here, given that the claims in the Ottawa case arose after Heasley filed his initial counterclaims with his answer, Heasley could have looked to MCR 2.118 to amend his claim. Although Heasley could have only amended with leave of the court, MCR 2.118(B) provides that leave to amend "shall be freely given when justice so requires." Even though we can only speculate whether the Allegan court would have granted leave to amend, MCR 2.203(E) expressly provides that "[i]f a motion to amend to state a counterclaim . . . is denied, the litigation of that claim in another action is not precluded unless the court specifies otherwise." In other words, if Heasley had sought and been denied leave to amend his counterclaim under MCR 2.118(B), then he would have been free to bring his claims in another action—such as the action in the Ottawa case. See *Salem Industries, Inc v Mooney Process Equipment Co*, 175 Mich App 213, 216; 437 NW2d 641 (1988) (noting that when leave to amend a counterclaim is denied, a party may file na counterclaim as a separate action "to the extent allowed by the rules of collateral estoppel and res judicata . . . .").

In sum, we conclude that summary disposition was properly granted under MCR 2.116(C)(6).

## III. SANCTIONS

### A. STANDARD OF REVIEW

Heasley argues the trial court erred by imposing sanctions upon him and his lawyer. A trial court may assess costs and attorney fees against a party as a sanction for asserting a frivolous action or defense. MCL 600.2591(1). In addition, a trial court may impose sanctions if a document is signed for an "improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." MCR 1.109(E)(5)-(E)(6). A court's finding of frivolousness is reviewed for clear error. *BJ's & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 405; 700 NW2d 432 (2005). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

### B. ANALYSIS

The trial court imposed sanctions after finding that Heasley's complaint was frivolous. MCL 600.2591(3)(a) provides that a claim is frivolous if (1) "The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party," (2) "The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true," and/or (3) "The party's legal position was devoid of arguable legal merit." Similarly, under MRE 1.109(E), a trial court may impose sanctions if a party or lawyer signs a document for an "improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." MCR 1.109(E)(5)-(E)(6).

Here, the trial court found that Heasley "improperly and deliberately chose a different court in order to undo the decision of a co-equal court and as a result inflict maximum financial pain on defendants in the form of unnecessary attorney fees and litigation harassment." The record supports the court's finding. The Ottawa case was filed two days after Heasley received an unfavorable ruling on his motion to strike some of defendants' exhibits in the Allegan case. In the Ottawa case, Heasley raised claims that substantially mirrored his argument in favor of striking the exhibits in the Allegan case. Thus, although the legal viability of his claims had just been tested in the Allegan case and found lacking, Heasley revived the claims in a new lawsuit in a different county. As a result, after defending itself against claims that it violated Heasley's rights under HIPPA, violated his common law and statutory right to privacy, and violated the physician-patient privilege by using certain exhibits to support its motions for summary disposition in the Allegan case, the Hospital—less than two days later—was forced to defend itself against essentially the same arguments in a new lawsuit raised in a different county. To further harass the Hospital and drive up the litigation costs, Heasley also sued the Hospital's law firm and its lawyer in her personal capacity, thereby necessitating the Hospital to obtain new counsel to represent it in the Ottawa case.

And, rather than candidly disclosing that the Allegan court had already ruled on the issue, Heasley proclaimed in his complaint that there was "no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint *pending in this court* . . . ." The added language allows for an inference that Heasley was attempting to mislead the Ottawa court by suggesting that there was no other civil action arising out of the same transaction

or occurrence as the claim raised in his complaint.[4] As noted above, however, the claim in this case, like the claim in the Allegan case, arose out of the same transaction or occurrence—namely, the Hospital's attempts to collect a debt that Heasley allegedly owed it. Despite not disclosing the details of the ongoing dispute in the Allegan case, Heasley's request for relief also disingenuously asked the Ottawa court to strike the challenged exhibits from the Allegan case.[5] The court did not clearly err by finding Heasley's claim in the Ottawa case was frivolous under MCR 600.2951 and MCR 1.109(E).

Affirmed. Defendants may tax costs as the prevailing parties. MCR 7.219(A).

/s/ James Robert Redford
/s/ Jane M. Beckering
/s/ Michael J. Kelly

[4] The summons, which was filed with the complaint, provided that "There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint." The summons filed in the Ottawa case does not, however, include the modifier "in this court."

[5] We recognize that Heasley made additional requests for relief. However, it is telling that the first request was that the Ottawa court essentially "vacate" the Allegan court's decision that the exhibits were appropriate and would not be stricken from the record.