# STATE OF MICHIGAN

# COURT OF APPEALS

LATOYA SNEAD,

Plaintiff-Appellee,

v

DAVID SNEAD,

Defendant-Appellant.

UNPUBLISHED
November 24, 2020

No. 351069
Wayne Circuit Court
LC No. 15-108292-DM

Before: GLEICHER, P.J., and K. F. KELLY and SHAPIRO, JJ.

PER CURIAM.

In this domestic-relations case, defendant David Snead appeals the trial court's denial of his motion seeking reconsideration of the court's denial of his motion for sanctions and attorney fees against plaintiff LaToya Snead. He also asks that we vacate the court's prior order denying sanctions and attorney fees. Finding no error, we affirm.

## I. BACKGROUND

Defendant and plaintiff divorced in June 2016 and were granted joint legal and physical custody of their two minor children. Since the divorce the parties have engaged in extensive postjudgment litigation including multiple motions regarding parenting time, custody and child support. Relevant to this appeal, in March 2018, defendant filed a motion to modify parenting time and his child support obligation that was based on him having 160 overnights. The referee concluded that defendant had demonstrated a change of circumstances sufficient to consider a change in parenting time and ordered the parties to participate in mediation. Following that assessment, a referee hearing was held on October 31, 2018, and the referee issued a recommendation, later adopted by the trial court, that the parties receive equal parenting time. The referee did not, however, rule on the motion to modify child support, instead adjourning that matter to February 5, 2019, and directing both parties to file written summaries explaining their calculations of plaintiff's income. The parties did so, but the referee concluded that further documentation was necessary and so adjourned the motion for a second time, directing the parties to provide additional financial documentation.

After the parties filed the requested materials and a hearing was held, the referee issued a recommendation on May 16, 2019, containing very detailed findings of fact regarding each party's income and calculating the parties' support obligations based on those figures. Plaintiff filed objections to the referee's recommendation, and so the trial court held a de novo hearing on July 15, 2019. The court agreed with plaintiff that the referee had improperly treated $13,380 in transfers between plaintiff's business and personal accounts as income, and so deducted that amount from her income as found by the referee. The court found that all other objections made by plaintiff lacked specificity or were based on documentation that was not presented to the referee. Based on plaintiff's readjusted income, the trial court modified the referee's recommendations regarding child support in plaintiff's favor.

After plaintiff filed her objections to the May 16, 2019 referee recommendation, but before the trial court's de novo hearing, defendant filed a verified motion for sanctions and attorney fees. Defendant set forth a history of allegedly frivolous filings by plaintiff throughout the postjudgment litigation, including the most recent litigation concerning child support. Defendant argued that plaintiff's objections to the referee's recommendation regarding child support were frivolous and attributed the two adjournments to plaintiff providing disorganized and incomplete financial information. Defendant requested sanctions and attorney fees pursuant to MCR 1.109, MCL 600.2591 and MCR 3.206(D)(2).

The trial court heard defendant's motion at the same July 15, 2019 hearing at which it modified the referee's child-support recommendation. After ruling on plaintiff's objections to the referee's recommendation, the court denied defendant's motion for sanctions and attorney fees, finding that plaintiff's objections were not frivolous. The court entered an order denying defendant's motion "for the reasons stated on the record."

Defendant filed a motion for reconsideration, arguing that the trial court failed to articulate a reason for denying his request for attorney fees. Defendant also argued that plaintiff "failed to represent her true income … through multiple filings purposely mislabeled as to create confusion and suffocate this Court's docket." In an opinion and order dated August 5, 2019, the court denied the motion. It reasoned that defendant's reconsideration motion did not present new issues or arguments. Further, defendant failed to establish palpable error considering that the court found plaintiff's objections to the referee's recommendation nonfrivolous and the court had in fact made a downward adjustment of plaintiff's income at the de novo hearing. The court further found that defendant failed to show that plaintiff had the ability to pay attorney fees under MCR 3.206(D)(2)(a), "particularly given the reduction in plaintiff's income determined by the court."

## II. ANALYSIS

Defendant argues that the trial court erred by denying his motion for reconsideration and his motion for sanctions and attorney fees. We disagree.[1]

[1] We review a denial of a motion for reconsideration for an abuse of discretion. *Luckow Estate v Luckow*, 291 Mich App 417, 423; 805 NW2d 453 (2011). We also review the trial court's decision

MCR 2.119(F)(3) provides:

> (3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Defendant's motion for reconsideration did not present new arguments or identify an error by which the trial court had been misled. Instead, defendant asserted that the court failed to provide adequate reasons for denying his motion for sanctions and attorney fees.[2] Under those circumstances, the trial court did not abuse its discretion by denying the motion for reconsideration. See *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003), overruled on other grounds by *Speicher v Columbia Twp Bd of Trustees*, 497 Mich 125; 860 NW2d 51 (2014) (affirming denial of a motion for reconsideration because the movant "did not raise any error that misled the court or the parties, but rather questioned the trial court's reasoning and its decisions on issues of law already decided by the court.").

We also conclude that the trial court's initial denial of defendant's motion for sanctions and attorney fees was proper. A court may assess costs and attorney fees against a party as a sanction for bringing a frivolous claim. MCR 1.109(E)(7); MCR 2.625(A)(2); MCL 600.2591(1). A civil action or defense is frivolous if any of the following conditions exist:

> (*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (*ii*) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

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to deny attorney fees for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). We review a trial court's decision to deny sanctions for clear error. See *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008). "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.*

[2] To the degree that defendant relies on MCR 3.210(D)(1), his argument is misplaced. That court rule provides that "findings of fact and conclusions of law are required on contested postjudgment motions to modify a final judgment or order[.]" MCR 3.210(D)(1). However, a motion for attorney fees is not a motion to modify a final judgment or order, and so that rule did not apply to the trial court's decision.

(*iii*) The party's legal position was devoid of arguable legal merit. [MCL 600.2591(3)(a)(*i*)-(*iii*).]

At the motion hearing, the court reviewed the statute and found that plaintiff's objections to the May 16, 2019 referee recommendation were not frivolous. Given that plaintiff's objections to the referee's findings resulted in relief, i.e., a reduction in her calculated income of over $13,000, we see no basis to question that determination.

Defendant also sought to recover attorney fees under MCR 3.206(D), which allows a party to a domestic-relations case to "request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding." MCR 3.206(D)(1). The court rule provides two possible grounds for recovery:

> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
>
> (a) the party is unable to bear the expense of the action, including the expense of engaging in discovery appropriate for the matter, and that the other party is able to pay, or
>
> (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply. [MCR 3.206(D)(2)(a)-(b).]

"MCR 3.206(D)(2)(a) has been interpreted to require an award of attorney fees in a divorce action only as necessary to enable a party to prosecute or defend a suit." *Skaates v Kayser*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 346487) (quotation marks and citations omitted); slip op at 12. MCR 3.206(D)(2)(b), on the other hand, "considers only a party's behavior, without reference to the ability to pay." *Richards v Richards*, 310 Mich App 683, 701; 874 NW2d 704 (2015).

The trial court concluded that fees were not warranted under MCR 3.206(D)(2)(a) because defendant had not shown that plaintiff was able to bear the expense of defendant's fees, particularly when the court had made a downward adjustment of plaintiff's income at the de novo hearing. Defendant does not challenge that finding, but instead argues that the trial court erred by evaluating his request for attorney fees under this subrule rather than MCR 3.206(D)(2)(b). Since defendant's motion sought recovery under both subrules,[3] it was proper for the court to address MCR 3.206(D)(2)(a).

Defendant also argues that the trial court did not address MCR 3.206(D)(2)(b), which allows a party to seek attorney fees that "were incurred because the other party refused to comply with a previous court order . . . ." To the degree the trial court failed to address this rule, we find

[3] After citing MCR 3.206(D)(2)(a), defendant's motion stated: "Defendant is unable to bear the expense of responding to plaintiff's frivolous filings and based on the findings of the Referee as to her income and otherwise, Plaintiff is able to pay."

no reversible error as defendant fails to establish that he was entitled to fees under this provision. First, a motion for attorney fees under MCR 3.206(D) must be brought within a reasonable time after the fees sought were incurred. *Colen v Colen*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 345318); slip op at 5. Defendant's July 2019 motion for fees refers to the totality of plaintiff's postjudgment conduct, some of which occurred months or over a year prior to plaintiff's objections to the May 2019 referee recommendation on child support. Clearly, some of these claims were untimely, and it was not the trial court's responsibility to sift through the alleged misconduct to determine if plaintiff had recently violated an order.

Second, defendant has not shown substantive grounds for relief under MCR 3.206(D)(2)(b) since his brief fails to identify any court order that plaintiff violated that would allow for attorney fees under that rule. See *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990) ("[T]he burden is on the appellant to persuade the reviewing court that a mistake has been committed . . . ."). Defendant does take issue with the documentation that plaintiff provided regarding her income, some of which, as found by the trial court, was "extremely difficult to follow." However, defendant fails to establish that the documentation provided by plaintiff in advance of the referee hearings violated an order and there was no finding by the referee or the trial court to that effect.[4]

Finally, defendant's claim that the referee recommended sanctions misstates the record. On August 2, 2018, the referee found that a motion by plaintiff regarding parenting time was frivolous and recommended awarding defendant attorney fees. The trial court followed that recommendation and awarded defendant $1,800 in attorney fees as to that motion.[5] However, the referee did not recommend that sanctions or attorney fees be imposed because of plaintiff's objections to the May 2019 child-support recommendation.

[4] Defendant also asserts that the trial court improperly relied on documentation provided by plaintiff that had not been admitted into evidence when determining the proper child support level. However, defendant does not appeal the trial court's child-support determination and, at the de novo hearing, he all but conceded that the referee had made the mathematical error objected to by plaintiff. Thus, we find no reason to revisit the trial court's evidentiary rulings. In addition, when defendant made an explicit objection to some documents, the trial court stated that it was not relying on the challenged material. Lastly, defendant has not identified the "unverified documents" that were improperly considered or their content and so any such argument has been abandoned. See *McIntosh v McIntosh*, 282 Mich App 471, 484; 768 NW2d 325 (2009) ("This Court will not search the record for factual support for a party's claim.").

[5] In her appellee brief, plaintiff requests that we overturn the trial court's October 11, 2018 award of fees. In the absence of a cross-appeal, however, we lack jurisdiction to provide plaintiff's requested relief. See *Turchek v Amerifund Fin, Inc*, 272 Mich App 341, 351; 725 NW2d 684 (2006) ("[T]he failure to [file a cross-appeal] generally precludes an appellee from raising an issue not appealed by the appellant.").

## III. CONCLUSION

Defendant does not establish that the trial court abused its discretion when it denied the motion for reconsideration or that it erred by denying his motion for sanctions and attorney fees. Accordingly, we affirm the trial court's decision.

Affirmed. Plaintiff, having prevailed in full, may tax appellate costs. MCR 7.219(A).

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro