

STATE OF MICHIGAN
COURT OF APPEALS

MELISSA SHEPARD, also known as MELISSA
TRAINOR,

Plaintiff-Appellant,

v

THOMAS NATHANIAL SHEPARD,

Defendant-Appellee.

UNPUBLISHED
May 27, 2021

No. 353900
Ionia Circuit Court
LC No. 2018-033154-DM

Before: BOONSTRA, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

Plaintiff, Melissa Shepard, appeals as of right the trial court order that denied her request for attorney fees as a sanction against defendant, Thomas Nathaniel Shepard. We affirm.

I. FACTS

In March 2019, the trial court approved the consent judgment of divorce and uniform child support order agreed to by plaintiff and defendant. The child support order specified that neither party was to receive child support even though the Michigan Child Support Formula (MCSF) recommended that plaintiff pay defendant \$8 per month. On January 24, 2020, plaintiff requested modification of child support, claiming that there had been a change of circumstances in defendant's employment and income level since the last child support order, which was the order approved by the trial court in March 2019. Shortly thereafter, plaintiff issued subpoenas to defendant, his employer, the employer's president and human resources department, and two employees of the accounting firm used by defendant's employer.

Defendant moved to quash the subpoenas under MCR 2.305(A)(4)(a), arguing that the subpoenas were not reasonably calculated to result in admissible evidence of defendant's income available under the MCSF. Specifically, defendant argued that the information plaintiff sought was irrelevant or had been disclosed during proceedings before the trial court approved the consent judgment of divorce. Defendant also requested attorney fees and a protective order if the trial court ordered the production of confidential information. Additionally, defendant moved for a more definite statement or to strike pleading, and for sanctions, in response to plaintiff's motion

to modify child support. Defendant argued that plaintiff's vague allegation that his employment and income had changed was insufficient under MCR 2.115. Defendant further argued that pursuant to MCR 2.119(A)(1)(b) plaintiff failed to state the grounds upon which her motion was based with particularity, and requested sanctions under MCR 1.109(E).

In response, plaintiff maintained that because MCR 2.115 only applies to pleadings, the trial court could not grant the relief sought by defendant in his motion for a more definite statement or to strike pleading. Defendant also stated that her motion to modify child support complied with the particularity requirements under MCR 2.119(A)(1)(b). Regarding the subpoenas, plaintiff argued that defendant's income included more than wages and, therefore, the information subpoenaed was relevant. Plaintiff further argued against a protective order because defendant had not shown good cause. In addition, plaintiff requested attorney fees, contending that defendant's motion to quash subpoenas was frivolous and intended to harass, embarrass, or injure her.

The trial court conducted a hearing on defendant's motions on March 3, 2020. During this hearing, plaintiff requested attorney fees. The trial court did not award attorney fees to either party, but did grant defendant's motion for more definite statement and his motion to quash subpoenas issued by plaintiff. Plaintiff now appeals to this Court.

II. APPELLATE JURISDICTION

On appeal, plaintiff first argues that the trial court abused its discretion by granting defendant's motion for a more definite statement. Second, plaintiff argues that her motion to modify child support satisfied MCR 2.119. Plaintiff also argues that the trial court abused its discretion by granting defendant's motion to quash subpoenas and his request for a protective order without making the requisite factual findings, and by denying her request for attorney fees.

Plaintiff identified the March 16, 2020 trial court order as a "final order" being appealed under MCR 7.202(6), which states, in relevant part:

- (a) In a civil case,
 - (i) 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;
 - (ii) an order designated as final under MCR 2.604(B);
 - (iii) in a domestic relations action, a postjudgment order that, as to a minor, grants or denies a motion to change legal custody, physical custody, or domicile,
 - (iv) a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule,
 - (v) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or

an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity[.]

The March 16, 2020 trial court order granted defendant’s motion for more definite statement, granted defendant’s motion to quash subpoenas issued by plaintiff, and denied defendant’s request for attorney fees. This order neither disposed of all claims in this case nor was designated as final under MCR 2.604(B). Also, the order was not a postjudgment order addressing custody or domicile of a minor, and did not include a governmental immunity claim. Nonetheless, because the order implicitly denied plaintiff’s request for attorney fees, and denied defendant’s request for attorney fees, MCR 7.202(6)(a)(iv) applies to this appeal.

Moreover, MCR 7.203(A) states that this Court has “jurisdiction of an appeal of right filed by an aggrieved party” from a “final order” that denied attorney fees. See MCR 7.202(6)(a)(iv). However, MCR 7.203(A)(1) limits an appeal under MCR 7.202(6)(a)(iv) “to the portion of the order with respect to which there is an appeal of right.” Accordingly, such “appeals only pertain to the award of attorney fees,” and “any issue outside those challenging the award of attorney fees goes beyond our jurisdiction over these appeals.” *Pioneer State Mut Ins Co v Michalek*, 330 Mich App 138, 143; 946 NW2d 812 (2019). As a result, plaintiff’s appeal is limited to the portion of the trial court’s decision that denied her request for attorney fees.

III. ATTORNEY FEES

Plaintiff contends that the trial court abused its discretion by denying her request for attorney fees and sanctions. We disagree.

This Court reviews a trial court’s decision regarding attorney fees for an abuse of discretion. *Cleary v Turning Point*, 203 Mich App 208, 211; 512 NW2d 9 (1993). “A trial court abuses its discretion when it chooses an outcome that falls outside the range of reasonable and principled outcomes.” *Fette v Peters Constr Co*, 310 Mich App 535, 547; 871 NW2d 877 (2015). A trial court’s factual findings are reviewed for clear error. *Id.* A finding is clearly erroneous when this Court is left with a definite and firm conviction that the trial court made a mistake. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997).

MCR 1.109(E)(5) provides that “[t]he signature of a person filing a document, whether or not represented by an attorney, constitutes” the person’s certification 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.

MCR 1.109(E)(6) provides that if a person signs a document in violation of MCR 1.109(E), the trial 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.” MCL 600.2591 also permits the trial court to award attorney fees to a prevailing party if the trial court finds that the nonprevailing party’s civil action or defense was frivolous. “Frivolous” means one of the following:

(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.

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

In this case, plaintiff requested attorney fees under MCL 600.2591 and MCR 1.109(E)(5) and (6) in her response to defendant’s motion to quash. At the March 3, 2020 hearing, plaintiff’s counsel again requested attorney fees. The trial court did not explicitly hold when making its oral findings or in its written order that it was denying plaintiff’s request for attorney fees. Notably, the trial court’s March 16, 2020 order only specified that it denied defendant’s request for attorney fees. However, neither party disputes that the trial court denied plaintiff’s request for attorney fees.

Furthermore, we find that the trial court’s order granting defendant’s motion to quash implicitly denied plaintiff’s request for attorney fees. Because plaintiff was not the prevailing party in this case, she was not eligible for attorney fees. See MCL 600.2591(3)(b). When the trial court granted defendant’s motion to quash subpoenas, it was affirming defendant’s factual and legal arguments, which were the same factual and legal arguments that plaintiff argued constituted grounds for sanctions under MCL 600.2591 and MCR 1.109(E)(5) and (6).

Nevertheless, plaintiff is correct that the MCSF broadly defines income to include more than just wages. See 2021 MCSF 2.01. But defendant moved to quash plaintiff’s subpoenas pursuant to MCR 2.305(A)(4)(a), contending that the subpoenas were unreasonable or oppressive. Defendant did not disagree with plaintiff’s definition of income, but with plaintiff’s decision to issue five subpoenas to five different sources seeking largely the same documentation that plaintiff should have already possessed because it was relevant to the divorce judgment that the trial court entered less than a year before plaintiff issued the subpoenas.

In addition, plaintiff contends that she was entitled to attorney fees because if defendant’s motion to quash was sincere, he would have responded to the subpoena issued to him. However, even if defendant had responded to the subpoena, any such response would not have resolved the question of whether the subpoenas issued to defendant’s employer, the employer’s president and human resources department, and two employees of the accounting firm used by his employer were unreasonable or oppressive. See MCR 2.305(A)(4)(a). Plaintiff does not expand on this contention, reference any support in the trial court record, or identify legal precedent analyzing similar facts. Relatedly, plaintiff did not provide, and the trial court record did not include, any evidence that defendant’s motion to quash was meant to delay litigation or embarrass, injure, or

harass her. Therefore, the trial court did not abuse its discretion by denying plaintiff's request for attorney fees.

Affirmed.

/s/ Mark T. Boonstra

/s/ Mark J. Cavanagh

/s/ Michael F. Gadola