

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN EDUCATION ASSOCIATION,

Plaintiff-Appellee,

v

HOEKENGA & FARRELL, P.C. and DANIEL J.
HOEKENGA,

Defendants,

and

MARC M. SUSSELMAN,

Defendant-Appellant.

UNPUBLISHED
September 11, 2001

No. 220698
Ingham Circuit Court
LC No. 97-086714-CZ

Before: Cavanagh, P.J., and Markey and Collins, JJ.

PER CURIAM.

Defendant Marc M. Susselman (“defendant”) appeals as of right from the circuit court’s order denying his motion for sanctions under MCR 2.114 and MCL 600.2591, brought with his motion for summary disposition, which the circuit court granted. We reverse the denial of sanctions and remand.

Defendant was an associate with the firm Hoekenga & Farrell, P.C. (“defendant law firm” or “the firm”). Plaintiff Michigan Education Association (“plaintiff” or “MEA”) was a client of defendant law firm, but became dissatisfied with its representation and sought to sever its relationship with the firm. A number of lawsuits followed, including this one, in which plaintiff alleged that defendants tortiously interfered with its contractual and business relationships with certain local MEA affiliates by seeking to provide legal services to those affiliates, and that defendants breached ethical obligations and fiduciary duties owed to the MEA. Plaintiff sought injunctive relief as well as damages. Defendant sought dismissal from the suit because he had no involvement in any of the alleged dealings with the local union affiliates. Plaintiff refused to dismiss defendant unconditionally, and defendant filed a motion for summary disposition and sanctions. The circuit court granted defendant’s motion for summary disposition because it

found that none of the allegations against defendant had merit, but denied his motion for sanctions.¹ The court did award defendant \$230 in costs.

Defendant argues on appeal that the trial court clearly erred in denying his request for sanctions because plaintiff's suit against him was without factual or legal basis and was therefore frivolous. Under MCR 2.114, sanctions are mandatory if a court finds that a pleading was signed in violation of the court rule or a frivolous action or defense had been pleaded. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997). An attorney has an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. MCR 2.114(D); *LaRose Market v Sylvan Center*, 209 Mich App 201, 210; 530 NW2d 505 (1995). The reasonableness of the inquiry is determined by an objective standard and depends on the particular facts and circumstances of the case. *Id.* We review a trial court's decision on a motion for sanctions under MCR 2.114 for clear error. *Schadewald, supra*. A decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Id.*

We conclude that the circuit court clearly erred in denying defendant's motion for sanctions. At the time plaintiff filed its original complaint, plaintiff may have reasonably believed that defendant could be involved in the firm's alleged efforts to solicit union locals to retain its services, because defendant was one of only two people in the firm. However, by the time plaintiff filed its amended complaint in response to defendant's motion for more definite statement, plaintiff was aware that defendant was not a principal in the firm, and both defendant and defendant Daniel J. Hoekenga, the only remaining principal in the firm, had submitted affidavits stating that defendant had no involvement in the alleged solicitations. Plaintiff has presented nothing to indicate that it had any evidence to the contrary. Subsequently, Hoekenga testified at his deposition that the representatives of the union affiliates that the firm allegedly was negotiating with had no knowledge of or dealings with defendant, and reiterated at a second deposition that defendant was not involved in any regard. Although defendant asked to be deposed, plaintiff never deposed defendant. We thus conclude that plaintiff did not conduct a reasonable inquiry into the basis for its allegations against defendant, and that the inquiry it did conduct revealed no factual basis for its claims against defendant. See *Porter v United Shirt Distributors, Inc*, 176 Mich App 145, 147; 438 NW2d 893 (1989), remanded on other grounds 434 Mich 861 (1990). Accordingly, defendant should have been dismissed from the suit.

We reject plaintiff's contention that it was justified in refusing defendant's requests to be dismissed from the suit and defendant's offer of judgment because even if defendant was not involved in the alleged activities with local affiliates, plaintiff still had concerns that defendant was breaching or might breach his obligations under the Michigan Rules of Professional Conduct (MRPC), and therefore its fiduciary duties to plaintiff, by his continued representation of an

¹ The court stated: "[T]he fact that you were dragged into this mess is unfortunate, but at the time it was brought and through the early stages, at least, of this litigation, I'm satisfied that there was, at least some question of your involvement."

MEA member.² However, plaintiff had no evidence that plaintiff had breached or was going to breach its obligations under the MRPC in his handling of that matter.

Further, while plaintiff maintains that it offered to dismiss defendant from the suit numerous times, and stated in its response to defendant's motion for summary disposition that it was still willing to do so, the offer to dismiss was never unconditional; rather, plaintiff made defendant's dismissal from the suit conditional on his agreement to, among other things, comply with the MRPC relating to conflicts of interest. We note, however, that the preamble to the Michigan Rules of Professional Conduct, which is part of the comment to MPRC 1.0,³ states as follows:

[A] violation of a rule does not give rise to a cause of action, nor does it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purposes of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extradisciplinary consequences of violating such a duty. [Emphasis added.]

Because plaintiff's claims against defendant were not well-grounded in fact, MCR 2.114(D), we are left with the definite and firm conviction that the circuit court erred in denying defendant's request for sanctions.

Defendant next contends that he is entitled to attorney fees as sanctions. We held in *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 719; 591 NW2d 676 (1998), that pro se parties are not eligible for attorney fee sanctions under MCR 2.114. However, we also found that the language of MCR 2.114(E) affords the court sufficient discretion to design an appropriate sanction when the court rule has been violated. *Id.* Accordingly, we remand for determination of

² Plaintiff conceded in its response to defendant's motion for summary disposition that it had uncovered no evidence that defendant was involved in any proposal to a local affiliate to enter into a legal services agreement. At the hearing on defendant's motion for summary disposition, plaintiff indicated that it was dropping Count III, tortious interference, against defendant, but was proceeding with the remaining two counts against him.

³ MRPC 1.0(b) provides:

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules do not, however, give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with an obligation or prohibition imposed by a rule.

an appropriate sanction, which may include the amount of reasonable expenses incurred by defendant because of the filing of plaintiff's amended complaint and the pleadings that followed. MCR 2.114(E); *FMB-First Michigan Bank, supra* at 727.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jeffrey G. Collins