STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW CHARLES THORNE, Plaintiff-Appellee,	UNPUBLISHED November 15, 2012
v	No. 308382 Ingham Circuit Court
NICHOLE MARIE THORNE, Defendant-Appellant.	LC No. 10-004300-DM

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

PER CURIAM.

In this divorce case, Nichole Marie Thorne appeals as of right the trial court's order awarding Matthew Charles Thorne $585 in attorney fees as a sanction against her for having improperly signed a subpoena. We affirm.

The parties filed competing complaints for divorce in December 2010, with Matthew filing first and Nichole filing a counter-complaint two hours later. Throughout the litigation, Nichole served numerous subpoenas on third parties including Matthew's employer, telephone service provider, bank, and alleged girlfriend. The scheduling order stated, "Discovery shall be completed by the date of the Pre-Trial. No additional discovery shall be permitted after that date except upon motion for good cause shown." Nonetheless, Nichole served without challenge several subpoenas after the pretrial hearing on June 22, 2011.

The case progressed through referee hearings, mediation, and hearings before the trial court, culminating in a hearing on custody on August 30, 2011. The court issued its judgment of divorce on December 28, 2011. That judgment is not before us.

On September 21, 2011, Nichole served Matthew's employer a subpoena for his work schedule information from August 22, 2011, to the date of the subpoena. The subpoena was requested in the name of Nichole's attorney, Joanne Vallarelli Adam, but it was signed by attorney Kristen Krol at Adam's request. Nothing on the subpoena indicates that the signature was made for Adam or with Adam's permission. Nichole does not dispute that Krol was not an attorney of record.

Matthew's attorney notified Adam by email the next day that he understood that Matthew's employer had been served with a subpoena and that he intended to file a motion to quash. Adam responded that she only sought Matthew's work schedule. On September 26,

2011, Adam informed Matthew's attorney that Nichole requested her to withdraw the subpoena. Matthew's attorney asserted that proofs were closed and offered to withdraw the motion if Nichole paid $470 (two hours at $225 per hour plus the $20 motion fee), but Nichole declined the offer. On September 27, Matthew filed his motion to quash the subpoena, which included a request for a sanction compelling "defendant and/or her counsel" to reimburse Matthew for reasonable attorney fees incurred in prosecuting the motion. The motion was heard on October 4, 2011; the time for which other motions in the case had been set for hearing.

At the hearing, Matthew argued that the subpoena had only been made for the purpose of harassment and embarrassment. Matthew emphasized the number of subpoenas served by Nichole and the cost of litigating them. He argued that the latest subpoena was in violation of the signature requirement of MCR 2.114(C)(1) because it was not signed by an attorney of record and the court rule mandates a sanction for such a violation.

Nichole responded that the subpoena merely requested an updated work schedule, which Matthew was supposed to provide anyway, and that when she learned of Matthew's objections to it, she agreed to withdraw the subpoena. Nichole argued that she thought it would be helpful to the court to have current information regarding Matthew's schedule before it issued its judgment regarding custody. She further asserted that the absence of any indication that Krol signed the subpoena with Adam's permission and at her direction was merely an oversight by Krol and Adam's legal assistant; "it wasn't intended to trick anyone or do something that we weren't supposed to [do]." Nichole contended that Matthew's employer was called immediately and advised to ignore the subpoena, and a follow-up letter was also sent. Thus, she argued, that there was no need for Matthew to have incurred attorney fees. Nichole stated that MCR 2.114(C)(2) permits an attorney to correct a signature error, if the proper signature is provided promptly.

After the hearing, the court imposed a sanction of Matthew's fees incurred in responding to the subpoena until the time the subpoena was withdrawn. In its order, the court found that MCR 2.114 applies to a subpoena and that "delegating the signing of the subpoena to an attorney who is not an attorney of record is not a clerical error." The court stated that the sanction was not punitive but was to reimburse Matthew for the fees necessitated by Nichole's attorney's violation of MCR 2.114. The court also noted that the court rule only permits the sanction to be imposed "against the person who signed the document, a party in the case, or both" and found that although Krol signed the subpoena, sanctioning her was not appropriate. It therefore sanctioned Nichole, finding that was the only remedy available. The court further found that Matthew's attorney's rate and the number of hours spent were "reasonable and appropriate," and ordered Nichole to pay Matthew's attorney $585. Although nothing in the order indicates whether the court found there was any violation of MCR 2.114(D), after Nichole moved for reconsideration, the court's order denying the motion stated:

> [Nichole] filed numerous subpoenas throughout the case, and this was not the first subpoena that required a hearing. Many of [Nichole's] subpoenas were quashed, and at times these subpoenas came close to harassment of [Matthew] and a Third Party. This court never found the subpoenas to be harassing in nature, nor is it finding so now; however, if [Nichole's] attorney wishes to frequently and zealously use the power of subpoena in a case, she must be able to do so correctly.

On appeal, Nichole argues that the inadvertent omission of "for" or "with permission" from the signature on the subpoena was simply a clerical error by her attorney's staff and the signing attorney. She asserts that sanctions are required by MCR 2.114(E) only when there is a violation of the certification requirements of MCR 2.114(D), and because there was no improper purpose behind the subpoena, she should not have been sanctioned. We disagree.

A trial court's decision regarding whether to impose sanctions under MCR 2.114 is reviewed by this Court for clear error.[1] "A decision is clearly erroneous when, although there may be evidence to support it, [this Court is] left with a definite and firm conviction that a mistake has been made."[2] We review de novo the trial court's decision regarding the interpretation of a court rule.[3]

The relevant court rule reads as follows:

> (A) Applicability. This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules. See MCR 2.113(A). In this rule, the term "document" refers to all such papers.
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> (C) Signature.
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> (1) Requirement. Every document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document.
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> (2) Failure to Sign. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party.
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> (D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> (1) he or she has read the document;
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> (2) 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
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> (3) 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.

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[1] *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008).

[2] *Id.*

[3] *Peterson v Auto-Owners Ins Co*, 274 Mich App 407, 414; 733 NW2d 413 (2007).

> (E) 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.
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> (F) 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.[4]

Under the circumstances of this case, we cannot say that the trial court clearly erred when it found that Krol's act of signing her own name and not indicating that her signature was made "for" or "with permission of" Adam was more than a mere clerical error. "Clerical error" can be defined as, "An error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination."[5] When viewed as an act of certifying the document by an attorney who was not an attorney of record, Krol's signature is not a clerical error because she did not inadvertently or mistakenly sign the subpoena. The trial court's conclusion that this was not a clerical error therefore does not leave us "with a definite and firm conviction that a mistake has been made."[6]

Second, Nichole cites no applicable authority to support her contention that the "clerical error" exception applies to the signature requirement of MCR 2.114(C)(1). *Hoffman v Monroe Public Schools*,[7] the case that Nichole cites in support of her argument that a clerical error can be repaired, concerns the correction of a jury verdict and is inapplicable. Similarly, the court rules[8] cited by Nichole do not support her argument because they deal with correcting judgments and orders of the court. The purpose of MCR 2.612(A)(1) is "'to make the lower court record and judgment accurately reflect what was done and decided at the trial level.'"[9] Amending the signature of the subpoena in this case does not "accurately reflect what was done and decided at the trial level." Additionally, MCR 2.613(A) requires a finding that failure to vacate or modify a court order is "inconsistent with substantial justice." Nichole does not explain how the trial court's imposition of a $585 sanction that did not affect the judgment of divorce issued by the court was inconsistent with substantial justice.

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[4] MCR 2.114.

[5] Black's Law Dictionary (9th ed).

[6] *Guerrero*, 280 Mich App at 677.

[7] *Hoffman v Monroe Pub Sch*, 96 Mich App 256, 261; 292 NW2d 542 (1980).

[8] MCR 2.612(A)(1); MCR 2.613(A).

[9] *McDonald's Corp v Canton Twp*, 177 Mich App 153, 159; 441 NW2d 37 (1989), quoting *Stokus v Walled Lake Bd of Ed*, 101 Mich App 431, 433; 300 NW2d 586 (1980).

We also find that Nichole's argument that sanctions are mandated only when a document is filed for an improper or frivolous purpose to be without merit. "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 . . .."[10] Usage of the word "shall" mandates an appropriate sanction when the signature on a document violates the rule.[11] MCR 2.114(E) does not limit sanctions to violations of subrule (D), but more broadly to any violations of "this rule." Thus, it sanctions violations of the verification requirement of (B), the signature requirement of (C), and the certification requirement of (D). Had the drafters wanted the sanction to apply only when the certification requirement was violated, they could have used the word "certified" instead of "signed," could have referred to a violation of MCR 2.114(D) rather than "this rule," or could have made the sanction provision a subpart of subrule (D). Moreover, the inclusion of subrule (F), allowing further sanctions for "frivolous" claims and defenses, supports the conclusion that sanctions are allowed for violation of any part of MCR 2.114. Limiting MCR 2.114(E) sanctions to violations of the certification requirement would be duplicative of MCR 2.114(F)'s reference to frivolous claims. Courts should avoid rendering as surplusage any part of a court rule,[12] and Nichole's interpretation would do just that.

We decline to address Nichole's second issue on appeal, i.e., whether the subpoena was filed for an improper purpose, because the trial court ruled in her favor and she is therefore not aggrieved regarding that issue.[13]

Affirmed. As the prevailing party, Matthew may tax costs.[14]

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly

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[10] MCR 2.114(E).

[11] *Lamkin v Engram*, 295 Mich App 701, 709; 815 NW2d 793 (2012).

[12] *Grievance Administrator v Underwood*, 462 Mich 188, 194; 612 NW2d 116 (2000).

[13] See MCR 7.203(A); *Dep't of Consumer & Indus Servs v Shah*, 236 Mich App 381, 385; 600 NW2d 406 (1999).

[14] MCR 7.219(A).