STATE OF MICHIGAN

COURT OF APPEALS

JESSICA J. SPRAGUE,

Plaintiff-Appellee,

v

SCOTT M. MCMILLAN,

Defendant-Appellant.

UNPUBLISHED
June 19, 2014

No. 315155
Eaton Circuit Court
LC No. 08-001235-DC

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right an order for sanctions entered after the trial court concluded that a motion and objection to the Friend of the Court (FOC) child support calculations violated MCR 2.114. We affirm.

Defendant initially objected to a recommended increase in his child support payments. This objection was heard by the referee at a hearing in August 2012. Two weeks before that hearing, defendant had quit his job because of issues with management. The referee requested a year-to-date paystub from defendant to determine his earning history. Although defendant indicated that he would provide the information to the referee by the end of that week, he did not. The referee had warned defendant that he would operate "with the numbers I have" if no information was provided. Thereafter, the referee imputed income to defendant based on the potential for 40 hours of work at $31.56 per hour. The referee also indicated that he was "not convinced that dad was constructively discharged and believes dad voluntarily quit his job." The recommended child support was $1,113 per month.

Defendant filed objections to the recommendation, alleging in part:

> 4. Plaintiff continues to defraud this Court by understating income, filing false parenting time complaints and further fabricating stories about Mr. McMillan to her children, CPS and this Court.
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> 5. Mr. McMillan will show proof that he did not deliberately quit his job as stated by Referee Holland. He did not voluntarily leave his job, and will provide witnesses to that effect.

6. This Friend of the Court has consistently shown a predisposition toward biased opinions and rulings against Mr. McMillan, whole-heartedly believing stories fabricated by Plaintiff.

7. This Friend of the Court has consistently treated Plaintiff with deference, preferential treatment and extreme bias toward her, despite numerous hearings and proofs on the record clearly establishing that she is a dishonest person.

8. Mr. McMillan is improperly imputed income to a point that he has never made close to as [sic] $5491.44 per month, or as stated $31.56 per hour. This determination shows the FOC's bias and impropriety in its calculations.

* * *

11. This is highly prejudicial, and biased treatment, that appears as either a retaliatory move by the FOC because Defendant has continued to fight to have his children with him, or in the alternative, establishes that this Friend of the Court has a distinct habit of treating Hispanic and Native American males in a very disturbingly discriminatory manner.

At a motion hearing on defendant's objections, defendant failed to provide documentation regarding his 2012 income. His counsel explained that when defendant realized it would take four to six weeks to get the paystub, he "never even tried to get them." The only evidence provided to the court regarding defendant's earning capacity, other than testimony from defendant, was from plaintiff.

Defendant testified to the situation and circumstances surrounding his decision to leave work. He testified that his supervisor was angry about his work and "got literally in my space and started, you know, screaming and yelling at me." Defendant testified it was not the first time that his supervisor had done that to him and "I decided that was the last time he was going to do that to me. So I handed him my badge and I walked out." The manager offered defendant time to think about his decision, but defendant did not change his mind because the supervisor would be staying at defendant's worksite. Defendant was denied unemployment compensation because his job loss was qualified as a voluntary quit. Defendant said that he e-mailed the managers involved in the dispute to try to get them to testify on his behalf, but they did not respond.

Defendant testified he had never made the hourly rate imputed to him by the referee. He presented his 2009, 2010, and 2011 tax returns, but had not done his 2012 taxes because the W-2 form was not yet available. Plaintiff testified that she was working for only one employer. She also testified that she timely provided accurate income information to the FOC.

The FOC representative was also allowed to address the court. He highlighted the racial and discriminatory allegations set forth in defendant's pleading and noted that they were unsupported by any facts or evidence. Accordingly, as permitted by MCR 2.114, he advocated for a sanction against defendant and his attorney. Defense counsel responded that the sanction motion was "inappropriate," but apologized "that I have not had time to question [defendant]

with regard to his sense of bias and preferential treatment." She emphasized that the point of the hearing was to challenge the imputation of income to defendant.

The court noted that defendant had failed to provide income information to the FOC and, further, had failed to offer any evidence to support the numerous allegations set forth in paragraphs 4, 5, 6, 7, 8, and 11. The court found that defendant was not fired; rather, he quit. The court concluded that defendant's objections were frivolous and held that it was reasonable under the circumstances to impose sanctions pursuant to MCR 2.114. This appeal followed.

Defendant argues that the trial court did not make any inquiry into the factual basis for his allegations and that his objections were supported by the history of the case. He alleges that he had previously filed a complaint against the FOC. He argues that the allegations in the objections show how he feels but that he made a tactical decision not to pursue them. He further argues that there was no improper purpose of harassment or delay, and that his argument cannot be found to be frivolous simply because he did not prevail.

We review for clear error the trial court's decision to impose sanctions under MCR 2.114. *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008). A decision is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been committed. *Id.*

MCR 2.114 provides, in relevant part:

> **(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;
>
> (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
>
> (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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> **(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.

Whether "a claim or defense is frivolous must be based on the circumstances at the time it was asserted." *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). A party's "inability to prove its case by a preponderance of evidence" does not qualify the claim as frivolous. *Id*. If a party files "a signed document that is not well grounded in fact and law [it] subjects the filer to sanctions pursuant to MCR 2.114(E)." *Guerrero*, 280 Mich App at 678. Where a party does not present any documentary evidence to support their position, a claim may be found frivolous. *Spitzley v Spitzley*, 477 Mich 989, 990; 725 NW2d 464 (2007) (YOUNG, J concurring).

By emphasizing that defendant failed to produce evidence in support of his claims, the court implicitly based its decision to order sanctions on the requirement that a reasonable inquiry be made so that the document is "well grounded in fact." MCR 2.114(D)(2). Defendant protests that the court did not engage in an evidentiary hearing regarding the basis for defendant's beliefs. However, sanctions were issued following a hearing on defendant's own motion. Defendant had placed the allegations in issue and, when presented with the opportunity to support those allegations, submitted no evidence at all. Further, it is of no merit for defendant to point to the prior actions in this case. First, he alleged the abusive conduct "continues" and "consistently" is engaged in, thus making past conduct of little probative value if not irrelevant. Second, defendant alleges that he filed a complaint against the FOC for bias, but he does not give any citation to the record, in violation of MCR 7.212(C)(7).

Defendant and counsel argue that the allegations are the sincere beliefs of defendant and he should not be sanctioned for expressing them. This argument is without merit. A party may sincerely hold a belief or position in which there is no factual foundation. Yet, the beliefs must be well-grounded in fact for presentation to the court. Defendant was expected to buttress these allegations with proof at the hearing. Indeed, he explicitly stated he would provide witnesses in support of his termination theory. However, defendant presented no witnesses and did not utilize his subpoena power to compel testimony. Further, defendant offered no testimony to support the allegations that the FOC was biased against him. Even on the substantive issue of defendant's 2012 earning capacity, defendant failed to present, or even attempt to secure, the evidence requested months earlier by the referee.

Defendant asserts that sanctions were improper because there was no intent to harass or delay the opposing party. Under MCL 600.2591(3)(a)(*i*)-(*ii*), a frivolous suit may be one that either seeks to "harass, embarrass, or injure the prevailing party" or one that the "party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true." However, the trial court took action based on the court rule. MCR 2.114(D) imposes three requirements. Violation of any one of those three requirements is a violation of the rule and may trigger sanctions under MCR 2.114(E). *Guerrero*, 280 Mich App at 678. Therefore, the court properly characterized defendant's objections as frivolous because there was no reasonable basis to believe the discrimination allegations, regardless of whether they were intended to harass, embarrass, or injure plaintiff.

Counsel for defendant argues that it was improper to sanction her under the signature clause of MCR 2.114(D). However, the court rule clearly specifies that the "signature of an attorney . . . constitutes a certification by the signer" that "the document is well grounded in fact" and justified by good faith argument. Counsel signed the defendant's pleading and does not

assert otherwise. As stated above, the motion was properly found to be frivolous because defendant did not submit any evidence to support his allegations of bias or discrimination. The court did not err in assessing sanctions against the attorney because she signed and submitted a frivolous pleading.

Defendant next argues that the failure to secure a verdict in his favor did not make the motion frivolous. See *Jerico Constr*, 257 Mich App at 36. However, the court did not impose sanctions because defendant failed to persuade the court that there was bias, but because he did not present any evidence in support of those claims. See *Guerrero*, 280 Mich App at 678.

Finally, defendant argues that failing to prove that he was constructively discharged was not a sufficient basis for sanctions. However, even if the pleading was not frivolous with respect to the termination issue, the manifold unfounded allegations of discrimination are sufficient to affirm the court below. To find otherwise would allow a party to attach any unfounded allegations to a pleading containing only one justified issue without fear of sanctions. Such an interpretation would be an absurd result, substantially negating the purpose of MCR 2.114(D) or (F). We do not construe court rules to allow absurd results. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998), overruled in part on other grounds *Rafferty v Markovitz*, 461 Mich 265, 272 n 6 (1999).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Cynthia Diane Stephens