

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE DAWN REPPEN,

Plaintiff/Counter Defendant-
Appellee,

v

WILLIAM DAVID REPPEN,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
September 18, 2014

No. 316690
Livingston Circuit Court
LC No. 08-040669-DM

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right from an order of the circuit court awarding plaintiff costs in the amount of \$456. For the reasons set forth in this opinion, we affirm.

The parties were divorced on March 10, 2009, having been involved in protracted litigation. Following the divorce, the parties have engaged in extensive post judgment proceedings, the last of which is the subject of this appeal.

In February 2013, defendant filed a “motion for show cause, custody, parenting schedule, modification of support and other matters.” Defendant’s motion accused plaintiff of alienating the children from him, of failing to provide him with information about the children, of refusing to allow the children to engage in therapy, and of “putting her own desires before the needs and rights of her children.” Defendant’s motion asked the court to award “50/50 physical and legal custody.” Plaintiff testified that she strongly encouraged the children to make contact with defendant by means of e-mail and text message, but the children both remained very uncomfortable having contact with him. The referee found that the motions regarding custody were without merit and that it would not be realistic to go from suspended parenting time to a 50/50 custody arrangement. The referee also found that defendant’s motion was an attempt to relitigate issues raised in the 2010-2011 hearings.

Three weeks later, defendant filed a second motion for show cause, alleging that plaintiff had violated provisions of both the judgment of divorce and an April 2011 order. Defendant argued that plaintiff made false allegations to court officials, mental health workers, and child protective services (CPS). He also argued that plaintiff had intentionally estranged the children from him, had violated a court order requiring the parties to cooperate with respect to their

children, and had violated the directive to refrain from making disparaging remarks in the children's presence. Defendant also asserted that plaintiff accused defendant of harassment and stalking at the hearing on defendant's previous motion. Plaintiff asked to be awarded \$2,000 in costs as a sanction for having to defend against a frivolous motion.

The referee found that defendant's motion was without legal merit because none of the statements plaintiff allegedly made were made in the presence of the children. The referee also found that the great bulk of the allegations were an attempt to re-litigate issues already considered by the referee and decided by the court. The referee found that the remaining allegations specifically concern what transpired at the previous referee hearing. The trial court adopted the referee's recommendation and awarded plaintiff \$456¹ in costs for having to defend a frivolous motion. Defendant now challenges that award.

"We review for clear error the circuit court's decision to impose sanctions^[2] on the ground that an action was frivolous within the meaning of MCR 2.625(A)(2) and MCL 600.2591." *Ladd v Motor City Plastics Co*, 303 Mich App 83, 103; 842 NW2d 388 (2013). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002). "We review the amount of an award of sanctions for an abuse of discretion." *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

Defendant first argues that he cannot be subject to taxation of costs because he was the prevailing party "on appeal in Circuit Court." Defendant's assertion is legally inaccurate. Appeals in the circuit court are governed by subchapter 7.100 of the Michigan Court Rules. MCR 7.102(2) states "'appeal' means judicial review by the circuit court of a judgment, order, or decision of a 'trial court' or 'agency,' even if the statute or constitutional provision authorizing circuit court appellate review uses a term other than 'appeal.'" "[T]rial court' means the district, probate, or municipal court from which the 'appeal' is taken." MCR 7.102(9). "[A]gency' means any governmental entity other than a 'trial court,' the decisions of which are subject to appellate review in the circuit court." MCR 7.102(1). Simply stated, an objection to a Friend of the Court recommendation is not an appeal in the circuit court. Accordingly, because defendant has misconstrued what constitutes an appeal, MCR 2.625(B)(4) is inapplicable and defendant is not entitled to relief.

¹ The referee did not find plaintiff's request for \$2,000 representing 3 days of lost work and other expenses to be a reasonable calculation of costs. The referee recommended an award of \$456 representing one eight-hour day of lost work at \$57 per hour.

² Although *Ladd* uses the word "sanctions," MCR 2.625 addresses "taxation of costs." However, our courts use the terms interchangeably. See, e.g., *In re Costs & Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002).

Defendant's second argument is that plaintiff was not entitled to costs because she did not incur any "actual costs." A similar argument was raised in *In re Costs & Attorney Fees*, 250 Mich App at 104. In that case, the trial court sanctioned one of the parties for failing to disclose a signed document and arguing the statute of frauds as a defense to the action. *Id.* at 95. Regarding the argument "that plaintiffs incurred no proven costs as a direct result of the withholding, and that therefore no sanctions should have been awarded," this Court stated, "The relevant case law states only that the award be 'reasonable.'" *Id.* at 104. Again, it is difficult to glean from defendant's argument a coherent legal argument, however from what we can ascertain, MCR 2.625(A)(2) and MCL 600.2591 provide for costs in this matter. We additionally note that defendant fails to cite any authority to support his argument that the hearing referee's method of calculating costs was unreasonable. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Despite defendant's nonconforming brief, we find that calculating plaintiff's incurred costs based on one day of missed work was entirely reasonable under the circumstances. Given that the award need only be reasonable, it was not outside the range of principled outcomes for the trial court to award \$456 as costs.

Defendant's third argument is that plaintiff was not entitled to costs because defendant's motion was not frivolous. "Frivolous" means that at least 1 of the following conditions is met:

(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.]

The referee found that defendant's motion was "devoid of arguable legal merit" and filed for the purpose of harassing, embarrassing, or injuring plaintiff. There is ample evidence to support this finding. *Kitchen*, 465 Mich at 661-662. The referee is correct that none of defendant's allegations regarding statements made to court officials and therapists violates an order of the court. The specific order at issue requires the parents to cooperate, encourage an affectionate relationship with the other parent, and refrain from making disparaging remarks in the children's presence. Defendant does not assert that any of the statements plaintiff is alleged to have made to court officials, CPS workers, or therapists, were made in front of the children. It is not reasonable to read the court's order to mean that the parties are not allowed to raise serious concerns about abuse, harassment, and stalking in a court proceeding. Likewise, that plaintiff asked for a police escort while leaving the courthouse cannot be a "disparaging remark" intended to alienate the children from defendant. The request was not on the record until it was raised by defendant in his written motion and at the hearing.

Although "[n]ot every error in legal analysis constitutes a frivolous position," *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003), defendant's motion

was devoid of legal merit because it failed to allege facts warranting an order to show cause. The referee was correct that many of the allegations were related to issues previously litigated in 2010-2011. Accordingly, defendant is not entitled to relief.

Finally, defendant argues that there was legal error because “defendant’s motion was properly filed.” Simply stated, whether defendant’s motion was properly filed did not form the basis of the court’s decision to award costs, and was therefore irrelevant. Costs were awarded because defendant’s motion lacked legal merit.

Affirmed. As the prevailing party, plaintiff may tax costs under MCR 7.219.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello