

STATE OF MICHIGAN
COURT OF APPEALS

E’MATION CONTROLS AND ENGINEERING
INC,

Plaintiff-Appellant,

v

NICHOLAS DEJONG,

Defendant-Appellee.

UNPUBLISHED
October 13, 2026
10:21 AM

No. 371899
Kent Circuit Court
LC No. 22-000571-CB

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Plaintiff, E’Mation Controls and Engineering, Inc (E’Mation), appeals as of right the trial court’s July 16, 2024 opinion and order granting sanctions to defendant, Nicholas DeJong. E’Mation argues on appeal that the trial court clearly erred when it found that E’Mation’s amended complaint lacked a reasonable factual basis and was therefore frivolous. We disagree.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

DeJong began working for E’Mation, a controls engineering and automation company in Grand Rapids, Michigan, in May 2013 and subsequently signed a noncompete and confidentiality agreement in June of the following year. An electrician by trade, DeJong built electrical panels for machines used in robotic production lines across a variety of industries. After working at E’Mation for roughly nine years, DeJong quit his job at E’Mation and began working for a direct competitor, Apex Controls, LLC (Apex), as a panel builder.

On January 14, 2022, E’Mation sued DeJong for breach of contract, alleging that he had violated the noncompete and confidentiality agreement by working for Apex. DeJong moved for summary disposition under MCR 2.116(C)(8) (failure to state a claim), arguing that the relevant noncompete provision did not apply if DeJong resigned from his employment with E’Mation voluntarily. DeJong was not fired; he quit. Therefore, the relevant noncompete provisions did not apply.

In response, E'Mation argued that the relevant noncompete provision did in fact apply to voluntary terminations. E'Mation further alleged, for the first time,¹ that DeJong was disclosing confidential information to Apex in violation of Section 1(a) of the noncompete and confidentiality agreement.

At the hearing that followed, the trial court held that the language of the relevant noncompete provision was clear and unambiguous, applying only “ [‘][f]or a period of 12 months after termination of [DeJong’s] employment *by the company* . . . [’] ” (emphasis added). The trial court admitted that, although it had “never seen a noncompete clause worded in such an odd way,” the operative provision of the contract, “by its own language, . . . would not apply in a situation where the defendant resigns his employment of his own accord.” Because DeJong voluntarily resigned from E'Mation, the trial court held that noncompete provision did not apply and granted summary disposition in favor of DeJong.

As for E'Mation’s allegation that DeJong had violated the nondisclosure provisions of the contract, E'Mation requested that the trial court either interpret the breach of contract claim “a little more broadly” or grant leave to amend the complaint so that E'Mation “could break it into more specific counts that address those separate issues less nebulously.” According to E'Mation, the confidential information at issue had to do with “electrical panels for. . . pieces of automation equipment. And when it comes to wiring these things, E'Mation is know [sic] as—as a leader in—in the area and—and, you know, perhaps even nationally . . . and that’s because of its—its wiring systems.” The trial court granted E'Mation’s request and an amended complaint was filed the following month.

E'Mation alleged in its amended complaint that DeJong had breached his noncompete and confidentiality agreement by “using Plaintiff’s Confidential Information in the course of his employment with Apex, a competitor to Plaintiff, to Plaintiff’s detriment” and by “disclosing Plaintiff’s Confidential Information to Apex, other individuals at Apex, and other potential third parties.” DeJong denied the allegations, contending that E'Mation had “no reasonable basis for believing that the facts underlying the legal position are in fact true.”

In the requests for admission that followed, DeJong requested that E'Mation admit that it had no evidence that DeJong had either used or disclosed E'Mation’s confidential information in the course of his employment with Apex. DeJong further requested that E'Mation “[p]roduce all documents or information that substantiate or support Plaintiff’s allegation” that DeJong had either used or disclosed confidential information in the course of his employment with Apex. On June 21, 2023, E'Mation responded to DeJong’s requests for admission by stating that, pursuant to MCR 2.312(B)(3), it was “making a reasonable inquiry and [was] waiting for the discovery process to

¹ E'Mation appears to have recognized the oversight by acknowledging that the breach of contract claim was “generally pled,” with the only reference to the disclosure of confidential information being found in E'Mation’s prayer for relief, which requested that the trial court “[e]njoin[] Defendant from using or disclosing any confidential information belonging to E'Mation or its customers.”

bear out,” but added that “any reasonable inspection of Apex’s panels will show that after Defendant was employed at Apex, Apex’s wiring method changed.”

In an email DeJong sent to E’Mation on July 11, 2023, he argued that E’Mation’s answers were not compliant with the Michigan Court Rules, specifically MCR 2.312(B), which provides that a party may only respond to a request for admission with an admission, denial, or objection, and that the answer provided “may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she *has made* a reasonable inquiry and that the information known or readily available is insufficient to enable the party to admit or deny.” On July 13, 2023, E’Mation responded via email that its answers were in fact compliant with the court rules given the general obligation to supplement answers as discovery proceeds. On July 21, 2023, DeJong filed a motion either to compel answers to DeJong’s requests for admission or deem them admitted.

Three days later, E’Mation responded to DeJong’s requests for production. In response to DeJong’s request that E’Mation “[p]roduce all documents and evidence that substantiate, support, or relate in any way” to its allegation that DeJong had either used or disclosed confidential information in the course of his employment with Apex, E’Mation directed DeJong to Attachment C. The attachment consisted of two photographs: The first, labeled “Before Defendant,” depicted an electrical panel; the second, seemingly taken from Apex Controls’ LinkedIn page, showed a second electrical panel and was labeled “After Defendant.” The document did not explain what the photographs purported to show.

The president and owner of E’Mation, Jim Everett, would later explain at his deposition that the photographs showed DeJong had used or disclosed E’Mation’s “wire-label method.” According to Everett, the wire-label method was the way E’Mation’s employees labeled the wires in the electrical panels that they built. To use the wire-label method, an E’Mation employee would attach a label to a screwdriver. Then, when a label needed to be applied to a wire in the electrical panel being built, the screwdriver would be held up to the end of the wire, and a new label would be applied to the place on the wire that corresponded to the label on the screwdriver, guaranteeing that an electrical panel’s labels were consistently applied. The result was a neat and organized panel that customers appreciated, and which was easier to troubleshoot if necessary. “And I guarantee you,” Everett stated, “I guarantee you he’s teaching them how to do that.”

With the two photographs now in hand, E’Mation supplemented its answers to DeJong’s first set of requests for admission, claiming it had evidence in its possession that DeJong had either used or disclosed E’Mation’s confidential information in the course of his employment with Apex. After reviewing E’Mation’s supplemental answers, DeJong declined to withdraw his motion to compel and, in an August 8, 2023 email, expressed that he was “puzzled as to why Plaintiff submitted these supplemental responses now,” because

We reached out to you before filing our motion to compel and laid out the deficiencies in Plaintiff’s responses in significant detail, explained why they were deficient, and asked your client to amend its responses. In response, Plaintiff insisted that its responses were appropriate and complied with the Court Rules and refused our request. This forced Defendant to undergo the time and expense of filing the motion to compel that was filed. Now, as Plaintiff’s response is coming

due, Plaintiff has attempted to supplement most of its answers that are challenged in the motion—which is effectively an admission that the prior answers did not comply with the Court Rules as we identified.

E'Mation answered DeJong's motion to compel on August 14, 2023, arguing, among other things, that E'Mation's supplemental answers satisfied the court rules and DeJong's objections were therefore "now moot points." A hearing on the motion was held on August 17, 2023, and the trial court ruled that the matter would be held in abeyance until the close of discovery, at which point the issue would be revisited if necessary.

At Jim Everett's September 27, 2023 deposition, he was asked about the photographs of electrical panels that E'Mation provided to DeJong in response to his requests for production:

Q. And in your opinion this is evidence that Mr. DeJong has taken, then used or disclosed your confidential information in his employment at Apex?

A. Yeah. You look at—you look at the one and you look at the new stuff and it's—it's not that it's not wiring, because it is wiring. It's the spacing.

Everett went on to concede that "Attachment C," the two photos he found online, was all the evidence E'Mation had:

A. If I need to dig more I can, but this is a perfect example. You can see how—these labels are all up and down, up and down, all over the place on this thing.

Q. Okay.

A. On [Exhibit] 6. And on [Exhibit] 7 they're all spaced out equally. If you can see it. Now, don't get me wrong there. There's some wires that are bent and Nick knows that I would have said, "Hey, can you straighten those and turn them so the labels work?" But you can still see that the spacing is considerably different on this than this, from 6 to 7.

Q. Okay. So when did E'Mation discover these pictures? Do you remember the date?

A. Nope.

Q. Was it before or after you filed the lawsuit?

A. After.

Q. Okay.

A. For sure it was after.

Q. Okay.

* * *

Q. Okay. So this was the evidence, though?

A. Yeah, yeah. Like, literally I went and grabbed this off the Internet and it took me five minutes and sent it back to Andy.

Q. Okay. And you're certain that this is evidence that shows Nick used and disclosed your confidential information after he left E'Mation?

A. I'm just bringing it to everybody's attention that the spacing on that is terrible and this one is more equal.

Everett did not confirm that the photos showed DeJong's work-product. Further, Everett did not know when the photos were taken:

Q. So do you believe Exhibit 7 is work that Mr. DeJong did then?

A. Possibly.

Q. Okay.

A. Or it was somebody he taught.

Q. Okay. Gotcha. Do you know when these pictures got posted online?

A. One of 13 people that he supposedly is teaching over there right now.

Q. Okay. Do you know when these were posted online?

A. No.

Q. Do you know who took them?

A. No, no.

Q. Okay.

A. Nope. Just public domain.

Q. Right. Do you know when they were taken?

A. When I screenshot [sic] them?

Q. No. When the pictures were actually taken.

A. No, no idea.

Q. Okay. Do you know who built either of these panels?

A. No.

* * *

Q. . . . So . . . as you sit here today, do you have any evidence that Mr. DeJong has taken, used, and disclosed E'Mation's confidential information since he resigned his employment at E'Mation?

A. You'll have to reword it. Say it again.

Q. Do you have any other evidence besides these two pictures that we just discussed, Exhibits 6 and 7, that Mr. DeJong—

A. Not that I've gone out and searched out to get yet.

Q. So no other evidence or information—

A. Nope, not yet.

In the end, Everett conceded the full scope of the discovery to date consisted of the two photographs he found online:

Q. So have you looked at a panel that Apex has built since Mr. DeJong started working there?

A. No. I haven't done any investigating to find—I mean, I'm sure I could get into some places that I know that they do work at and I'm sure—I mean, I'm sure I could get access to it if I need to, but no, I have not gone and knocked on any doors and tried to get any more information.

Q. Okay. Talked to any Apex employees since Mr. DeJong started there?

A. No, no.

Q. Anybody's told you he's disclosed confidential information of E'Mation since his employment at Apex?

A. Not that I'm aware of.

Q. Okay.

A. Other than the fact that—all we can do is look at the results and what were told, right? What Nick told us when he left. He told individuals at the company that he had a dream job. That he was just going to teach 13 guys. He wasn't going to have to do anything. All he had to do was teach 13 guys how to build panels—

Q. Okay.

A. —and get them basically to our standard because their standard—their build standards sucked over there.

Q. Okay. So we'll come back to that in a second. Other than that statement from Nick as he was leaving and these pictures, do you have any other reason to believe he's taken, used, or disclosed E'Mation confidential information?

A. Not that I'm aware of right now.

DeJong moved for summary disposition a second time on January 9, 2024, under 2.116(C)(10) (no genuine issue of material fact), and a hearing on the motion was held on February 8, 2024. According to DeJong, the purportedly confidential information at issue—E'Mation's method of labeling the wires in its electrical panels—was not confidential because the method is a commonsense way to label wires that is generally used within the industry and which produces results that can be achieved by a number of other labeling methods. But even if the so-called wire-label method were confidential information, E'Mation failed to produce any evidence that DeJong had used or shared that information while at Apex.

When asked by the trial court what evidence E'Mation had that DeJong was using its confidential information at Apex, E'Mation replied:

[E'Mation]: So—so the evidence we have is that when—and Mr. DeJong testified as his deposition that he's been doing this for 40 years. He said he's seen lots of people do it.

[The Court]: Uh huh.

[E'Mation]: We asked him to name one. The only person he names turns out to be—and the only person he could name turns out to be the person he trained at Apex.

[The Court]: So the only person that anyone knows as far as this—

[E'Mation]: Yes.

[The Court]: —lawsuit is—I forgot his name—

[E'Mation]: Mr. Ruiz I think is—Moreno^[2]—

[The Court]: Yeah. Yeah. Anyway, Mr. Ruiz says I use it. No. You haven't talked to him. Mr. DeJong said he uses it and I trained him.

² Counsel for E'Mation corrects himself here but nonetheless continues to use the incorrect name, "Ruiz."

[E'Mation]: Yes. And again we have an inference that he shared it with Mr. —I want to say Ruiz, but I'm not sure of his name. Yes.

[The Court]: Okay.

[E'Mation]: Yes. That is—that is the crux of it.

In response, DeJong clarified that Mr. Ruiz was not, in fact, using the wire-label method claimed to be confidential by E'Mation, but rather different method altogether.

The trial court ultimately decided to “dismiss the case or grant summary disposition in favor of Mr. DeJong just on the damages issue alone.” However, the trial court also expressed skepticism about the evidentiary basis for the claim that DeJong had been using or sharing E'Mation's confidential information: “[G]iven even the most generous inferences, I—I find that evidence woefully insufficient as well that there's even any evidence that Mr. DeJong . . . shared this with anyone.” The trial court then added, “So, again, I'm not going to rule whether the wire label method is or is not proprietary under the contract. I don't think it's necessary. I find that there's insufficient evidence that Mr. DeJong actually shared this confidential information”

On March 25, 2024, DeJong motioned the trial court to impose sanctions, arguing that E'Mation's suit was frivolous, and a hearing on the motion was held on May 9, 2024. At the hearing, E'Mation argued that its suit was not frivolous because “the whole point of discovery [is] to try to find stuff out.”

[The Court]: No. I understand that. But before bringing the actual action, you have to have sufficient facts that justify the action. . . .

[E'Mation]: Well, he had—

[The Court]: But what evidence did [E'Mation] have that [DeJong] was actually using and teaching— . . .

[E'Mation]: Well, it was Mister—it was Mr. DeJong's own words as he left E'Mation Controls (inaudible)—

[The Court]: —he simply says: I'm going to train people. He didn't say: I'm going to train people in the wire label method.

[E'Mation]: That was the one specific thing that we came up with, but when he's leaving to go to a competitor—

[The Court]: Right.

[E'Mation]: —and he says: I'm going to be training people at this competitor—

[The Court]: Which he had a right to do.

[E'Mation]: Understood.

In the opinion and order that followed, the trial court ruled that E'Mation's suit was frivolous under MCL 600.2591(3)(a)(ii). According to the trial court, E'Mation filed its amended complaint without evidence to support its allegation that DeJong had misappropriated certain confidential information and disclosed it to third parties. Pursuant to MCR 600.2591, the trial court awarded DeJong \$63,446.25 in attorney fees and \$1,717.90 in costs against E'Mation and Rodenhouse Law Group, P.C., jointly and severally. This appeal followed.

II. ANALYSIS

A. STANDARDS OF REVIEW

“A trial court's determination that an action is frivolous is reviewed for clear error. We review de novo the proper interpretation and application of statutes and court rules.” *Bradley v Frye-Chaiken*, 514 Mich 679, 705; 22 NW3d 458 (2024) (quotation marks and brackets omitted). “A factual finding is clearly erroneous if there is no substantial evidence to sustain it or if, although there is some evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed.” *Miller-Davis Co v Ahrens Const, Inc*, 495 Mich 161, 172-173; 848 NW2d 95 (2014). The amount of sanctions imposed by a trial court is reviewed for an abuse of discretion. *BJ's & Sons Const Co, Inc v Van Sickel*, 266 Mich App 400, 407; 700 NW2d 432 (2005).

B. THE TRIAL COURT DID NOT CLEARLY ERR BY FINDING THAT THE ALLEGATIONS IN E'MATION'S AMENDED COMPLAINT LACKED A REASONABLE FACTUAL BASIS AND THAT THE AMENDED COMPLAINT WAS THEREFORE FRIVOLOUS

MCL 600.2591(1) provides that, if a court finds a civil action or defense was frivolous, “the court that conducts the civil action shall award the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.” MCL 600.2591(3)(a)(ii) in turn provides that an action is “frivolous” if “[t]he party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.” “The determination whether a claim or defense is frivolous must be based on the circumstances at the time it was asserted.” *Pioneer State Mut Ins Co v Michalek*, 330 Mich App 138, 147; 946 NW2d 812 (2019). A speculative belief alone does not provide a reasonable basis to believe the facts underlying a party's suit are in fact true. See *Meisner Law Group PC v Weston Downs Condominium Ass'n*, 321 Mich App 702, 733; 909 NW2d 890 (2017) (finding plaintiff's claims frivolous where there was “no basis in fact to support plaintiff's speculative belief”).

In addition, each attorney must conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003), overruled in part on other grounds by *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 283-285; 696 NW2d 646 (2005). The reasonableness of this inquiry is determined by an objective standard, and an attorney's subjective good faith is irrelevant. *Id.*

E'Mation's amended complaint was filed on May 12, 2022. DeJong's requests for admission and production of documents were delivered in May of the following year. E'Mation was asked at that time—again, a full year after its amended complaint was filed—either to admit that it had no evidence DeJong was using and disclosing its confidential information or, if E'Mation had such evidence, to provide it.

Although E'Mation initially refused to either admit or deny that it lacked such evidence, E'Mation did eventually respond to DeJong's request for production of documents by providing two photographs of electrical panels. However, as Everett admitted during his deposition, he did not know who took those photographs or when, nor could he say who built the electrical panels in the photographs or when. This was, according to Everett, all the evidence purporting to support its claims E'Mation had. Further still, E'Mation admits in its brief on appeal that it did not discover these publicly available photographs until *after* the amended complaint was filed. Indeed, when asked about the evidence E'Mation *had in its possession* at the time the amended complaint was filed, E'Mation could point only to the fact that DeJong had gone to work for a competitor and train electricians there.

Put another way, E'Mation speculated—from permissible conduct alone—that DeJong had breached his nondisclosure agreement. However, a speculative belief alone does not provide a reasonable basis to believe the facts underlying a party's suit are in fact true. See *Meisner*, 321 Mich App at 733. Therefore, the trial court did not err in finding that E'Mation's amended complaint was frivolous.

III. CONCLUSION

The trial court did not clearly err in finding that E'Mation's amended complaint was frivolous. We affirm.³

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney

³ As for E'Mation's argument that the trial court should have dismissed DeJong's motion for sanctions because there is no evidence that he—and not Apex, as E'Mation speculates—paid his attorney fees, E'Mation provides no legal authority to support this argument. “An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims. When a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned.” *Henderson v Dep't of Health & Human Servs*, 347 Mich App 36, 46; 14 NW3d 184 (2023) (quotation marks and citations omitted).