STATE OF MICHIGAN

COURT OF APPEALS

KASSANDRA RANCE,

Plaintiff-Appellee,

v

ROSS REUTERDAHL,

Defendant-Appellant.

UNPUBLISHED
December 19, 2019

No. 347849
Ottawa Circuit Court
LC No. 18-005536-CZ

Before: METER, P.J., and O'BRIEN and TUKEL, JJ.

PER CURIAM.

In this civil action, dismissed with prejudice by stipulation of the parties, defendant appeals as of right the trial court's denial of his motion for costs and attorney fees. We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

The record available for this appeal is sparse, given that the parties agreed to seal many relevant portions of it, including the complaint. Accordingly, our review is limited to the unsealed portions of the record.[1] The record makes clear, however, that plaintiff filed a civil action against defendant, who responded by arguing that the complaint was not well-grounded in fact, MCR 1.109(E)(5)(b), and was interposed for an improper purpose, MCR 1.109(E)(5)(c). About the time plaintiff filed her complaint, she also filed a grievance against defendant—who is an attorney—with the Attorney Grievance Commission, purportedly on the basis of the same or similar conduct.

[1] Complicating our review is the fact that the parties' briefs describe events that occurred off the record as well as facts that are allegedly documented in the sealed portions of the record, neither of which would be appropriate for this Court to consider on appeal.

A little over one month after plaintiff filed her complaint, the parties met for plaintiff's deposition, before which they engaged in settlement negotiations on the record, defendant presented plaintiff with three settlement offers, which the parties had previously discussed:

> (1) For the payment of zero dollars, plaintiff would dismiss the complaint with prejudice and would recant any information in her complaint to the Attorney Grievance Commission of which plaintiff did not "have any personal knowledge;"
>
> (2) For the payment of $1,500, plaintiff would dismiss the complaint with prejudice and would disavow any allegations made to the Attorney Grievance Commission; or
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> (3) For the payment of $2,500, plaintiff would dismiss the complaint with prejudice and would disavow any allegations made to the Attorney Grievance Commission.

Approximately one month later, the parties stipulated to sealing the "Complaint, Answer, Affirmative Defenses, and Demand for Reply." Subsequently, the parties entered the following proposed order of dismissal:

> **NOW COME** the Parties with an agreement to dismiss this action. On November 26, 2018, three (3) options for resolution of this matter were presented and were placed on a Statement of Record through deposition. The parties have agreed to option 1 (one), that provides for dismissal of this action, out of the three (3) options that were presented. Costs and fees are subject to the Michigan Court Rules. The Court having read this stipulation and otherwise being fully advised in the premise.
>
> **IT IS ORDERED** that Plaintiff's claims are dismissed with prejudice.
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> This order disposes of the last pending claim and closes the case.

The trial court duly signed the order without alterations.

Shortly thereafter, defendant submitted his bill of costs to the trial court clerk as the prevailing party under MCR 2.625(B). Defendant then moved the trial court to find that the allegations in plaintiff's complaint were frivolous, thereby entitling defendant to attorney fees and costs under MCR 1.109(E), MCR 2.625(A), and MCL 600.2591. Defendant attached to his motion an affidavit from an acquaintance of plaintiff who stated that plaintiff contacted her to make a false claim against defendant and also attached multiple text-message conversations between defendant and plaintiff. In one conversation, plaintiff accused defendant of being manipulative; in another, plaintiff thanked defendant for a fun night; and, in a third conversation, plaintiff asked to come over to defendant's home. Defendant argued that the text messages and affidavit showed that plaintiff had no factual basis to file her complaint. Moreover, defendant argued that the fact that plaintiff disavowed the allegations in the complaint indicated that the complaint was frivolous.

The trial court denied the motion, reasoning as follows:

> Defendant is asking that the Court re-open the case. However, the parties presented a stipulated order which was signed by the Court closing the case as the last pending claim was disposed. This was after the parties engaged in settlement negotiations and a mutually satisfactory resolution was obtained. The stipulated order did not reserve any issues for further litigation.
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> Importantly, the Court has never determined that plaintiff's complaint was, in fact, frivolous and filed in violation of statute and court rule. The re-opening of the case would require the Court to evaluate the merits of the case. The Court is unwilling to do so because the case is closed. Defendant cannot claim that "this is not fair" as he approved the closing of the case with no issues reserved.
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> The reference in the final order to costs and fees being "subject to the Michigan Court Rules" adds nothing to this analysis. Under the American rule, each party is responsible for their own attorney fees unless a statute or court rule says otherwise. There is nothing in the order asking or requiring the Court to decide the issue of costs or attorney fees. Therefore, the Court interprets its own order to reflect that each party is responsible for their own costs and fees.

This appeal followed.

II. ANALYSIS

We review the trial court's decision on a motion for attorney fees for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "Stipulated orders that are accepted by the trial court are generally construed under the same rules of construction as contracts." *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). Accordingly, we review de novo the interpretation of the order, as a question of law. See *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Silberstein v Pro-Golf America, Inc*, 278 Mich App 446, 460; 750 NW2d 615 (2008). An unambiguous stipulated order must be enforced as written, giving the language used in the order its plain and ordinary meaning. *Wilkie*, 469 Mich at 47.

Defendant argues that the trial court erred as a matter of law when it concluded that the stipulated order did not reserve the issue of attorney fees and costs. We agree. Again, the stipulated order stated, "Costs and fees are subject to the Michigan Court Rules." In the context of an order that otherwise dismissed the action, this language can only indicate that the parties intended to reserve the issue of costs and fees to the extent allowed by the court rules. Accordingly, if defendant's motion conformed to the court rules, it should have been allowed by the trial court, despite the stipulated dismissal.

Defendant moved the trial court to award costs under MCR 2.625 and MCL 600.2591, and attorney fees under MCR 1.109. MCR 2.625(A) provides, in pertinent part:

(1) In General. Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.

(2) Frivolous Claims and Defenses. In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.

MCL 600.2591 provides:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to 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.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) "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.

(b) "Prevailing party" means a party who wins on the entire record.[2]

MCR 1.109(E) provides, in pertinent part:

(5) Effect of Signature. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:

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[2] Because the stipulated order did not reserve the issue of statutory attorney fees, we only consider MCL 600.2591 to the extent that it is implicated by MCR 2.625. Again, the stipulated order stated, "Costs and fees are subject to the Michigan Court Rules;" it makes no reference to MCL 600.2591 or any other statutory provision.

(a) he or she has read the document;

(b) 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

(c) 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.

(6) 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.

(7) 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.

Nowhere in these rules is there a time limit on the motion for attorney fees and costs as a sanction for frivolity.[3] Rather, our cases have generally interpreted provisions governing motions for attorney fees and costs as requiring that the motion be brought within "a reasonable time after the prevailing party was determined." *Avery v. Demetropoulos,* 209 Mich App 500, 503, 531 NW2d 720 (1995) (discussing the timing of a motion under MCL 600.2591 which similarly authorizes an award of costs and fees for the filing of a frivolous suit). "The trial court has the discretion to decide if a motion was timely filed and this Court reviews the trial court's decision for an abuse of discretion." *In re Attorney Fees & Costs*, 233 Mich App 694, 699; 593 NW2d 589 (1999).

Here, the parties agreed to dismiss the case on January 11, 2019, noting that plaintiff had agreed to recant her allegations. Defendant filed his motion for costs and attorney fees on February 8, 2019, less than one month after the final judgment. Defendant provided the trial court with a bill of costs, a detailed record of his attorney fees, and a supporting affidavit and other documentary evidence regarding the frivolity of plaintiff's complaint. Given the detail necessary to support defendant's motion, we conclude that a month was a reasonable time after the final judgment to bring the motion.[4] Accordingly, we are left with a definite and firm

[3] MCR 2.625(F) does provide a 28-day window for the taxing of costs as a prevailing party, but defendant's January 24, 2019 submission of his bill of costs was within this window.

[4] Indeed, as noted in footnote 5, MCR 2.625(F) provides 28 days for a prevailing party to submit a bill of costs, which, in the normal course, requires considerably less preparation than a motion for frivolity sanctions.

conviction that the trial court erred by refusing to consider defendant's motion for attorney fees and costs.

Complicating our review is the fact that the parties stipulated to sealing several documents in the record, including the complaint. The trial court recognized this impediment to defendant's motion, noting that it was not going to "reopen" the case. Defendant, however, did not ask the trial court to unseal the record to decide his motion; rather, defendant argued that the frivolity of plaintiff's allegations was apparent on the public portions of the record, as well as the documentary evidence defendant attached to the motion. While we would normally be skeptical of a party's ability to demonstrate the frivolity of a complaint while the complaint itself is sealed, this case may be the exception to the rule. Plaintiff has already recanted any allegations in her complaint and the affidavit defendant attached to his motion, if believed, presents compelling evidence that plaintiff fabricated the complaint for an improper purpose.

The trial court, however, did not address this evidence, given its conclusion that the stipulated order precluded it from considering defendant's motion. Similarly, while defendant's evidence is facially compelling, plaintiff did not respond in the trial court to defendant's motion—likely because the trial court denied the motion without a hearing six days after defendant filed it. Accordingly, we remand this case to the trial court for consideration of defendant's motion in the first instance.

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Colleen A. O'Brien
/s/ Jonathan Tukel