

STATE OF MICHIGAN
COURT OF APPEALS

FREDERICK H. SIEGELE and
BERNARD H. MCKEOWN,

UNPUBLISHED
November 1, 1996

Plaintiffs,

and

MARILYN H. MITCHELL

Appellee,

v

No. 184746
LC No. 94-401711-CZ

BARRY L. KING,

Defendant–Appellant,

and

STEVEN KARAKAS, BARBARA THAMES
VAUGHAN, LEE D. CARR and SECODYNE, INC.,

Defendants.

Before: Sawyer, P.J., and Marilyn Kelly and D.A. Burrell,* JJ.

PER CURIAM.

Defendant appeals by right the trial court's March 10, 1995, order denying defendant King's motion for sanctions pursuant to MCR 2.114 against plaintiffs' attorney, Marilyn H. Mitchell. We remand for appropriate findings of fact.

Mitchell filed a verified complaint alleging, inter alia, that King and the other defendants conspired to prevent plaintiffs from reviewing corporate records. Mitchell's original complaint also alleged that King and the other defendants had conspired to defraud a bank, however, this allegation

* Circuit judge, sitting on the Court of Appeals by assignment.

against King was dropped in an amended verified complaint. Plaintiffs contended that their allegations against King could be substantiated by documents which were in the possession of Frederick J. Siegele. Frederick J. Siegele believed the documents were privileged, however, and would not permit Mitchell to review them without the trial court's authorization. After an *in camera* review of the documents, the trial court concluded that the documents were not relevant to the action and denied Frederick J. Siegele authorization to release the documents. All defendants were eventually granted summary disposition.

King thereafter moved for sanctions against Mitchell pursuant to MCR 2.114. King argued that Mitchell violated MCR 2.114(D) by signing the complaint when she had not made reasonable inquiries as to the factual support for the allegations against King. The trial court denied King's motion, commenting that this Court could determine whether his decision was an abuse of discretion.

Under MCR 2.114, an attorney's signature on a pleading constitutes a certification that the attorney has read the document and has made reasonable inquiry to determine that the document is grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. MCR 2.114(D)(1)-(2). If a document is signed in violation of this rule, the court "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." MCR 2.114(E).

To impose a sanction under MCR 2.114(E), the trial court must first find that an attorney or party has signed a pleading in violation of MCR 2.114(A)-(D). *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993). The determination of whether an attorney has violated the "reasonable inquiry" requirement of MCR 2.114(D)(2) depends largely on the facts and circumstances of the claim. *Id.* The imposition of sanctions under MCR 2.114 is mandatory upon a finding that a pleading was signed in violation of the court rule. *In re Forfeiture of Cash and Gambling Paraphernalia*, 203 Mich App 69, 73; 512 NW2d 49 (1993). A trial court has no discretion to exercise in determining if a sanction should be awarded. *Id.* The trial court in this case apparently acted under the erroneous assumption that its decision on King's motion was discretionary and failed to make appropriate findings of fact. We therefore remand for findings as to whether Mitchell made a reasonable inquiry into the factual basis of the claims against King. *Id.*

King also argues that Mitchell failed to make a reasonable inquiry into the legal basis of the claims against King. We find that King's argument is based on the erroneous assumption that plaintiffs' lawsuit was an attempt to collaterally attack a settlement reached in previous litigation between the parties. King has therefore made no showing that Mitchell violated MCR 2.114 in this manner. We also reject King's implicit arguments that he is entitled to sanctions as a matter of law.

Remanded for determination of whether Mitchell made a reasonable inquiry under the circumstances of the factual basis for plaintiffs' allegations against King. The trial court should consider whether Mitchell reasonably relied on Frederick J. Siegele's representations concerning the documents

and whether she made other reasonable efforts to establish that the allegations were grounded in fact.
We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Marilyn Kelly

/s/ Daniel A. Burrell