

STATE OF MICHIGAN
COURT OF APPEALS

UNILAND HOMES, INC.,

Plaintiff-Appellee,

v

JAMES S. MILES,

Defendant-Appellant.

UNPUBLISHED

November 26, 1996

No. 177900

LC No. 93-318696-CH

Before: Young, P.J., and Taylor and R. C. Livo,* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order denying his motion for sanctions. We affirm.

Count I of plaintiff's lawsuit against defendant alleged a tortious interference with an existing contractual relationship and Count II alleged tortious interference with business relations. Eventually plaintiff filed a motion for voluntary dismissal under MCR 2.504. Defendant opposed this motion asserting that he was on the verge of filing a motion for sanctions on the basis that plaintiff could not factually or legally support its case. The court dismissed the lawsuit but ruled defendant could file a motion seeking sanctions. An order to this effect was entered on March 25, 1994. Defendant then filed a motion seeking sanctions. After oral argument, the court entered an opinion and order on July 29, 1994, denying defendant's motions for sanctions.

Defendant claims that the trial court should have ordered costs and attorney fees as a condition of the March 25, 1994, order granting plaintiff's motion for voluntary dismissal. However, as defendant failed to file a claim of appeal from the March 25, 1994, order, we lack jurisdiction to review that order. *Ericksen v Fisher*, 166 Mich App 439, 450-451; 421 NW2d 193 (1988); *Gherardini v Ford Motor Co*, 394 Mich 430; 231 NW2d 643 (1975). Our review is limited to determining whether the trial court's order of July 29, 1994, was clearly erroneous, i.e., did the court err in denying defendant's motion for sanctions under MCR 2.114(E) for a violation of MCR 2.114(D) (defendant does not claim that he was entitled to sanctions under MCL 600.2591; MSA 27A.2591).

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

Although the trial court analyzed defendant's motion under MCL 600.2591; MSA 27A.2591, rather than MCR 2.114(E), the trial court's findings and the record are adequate to review defendant's arguments regarding the complaint. *Stackhouse v Stackhouse*, 193 Mich App 437, 445-446; 484 NW2d 723 (1992). The trial court did not clearly err in finding that plaintiff's action was not to harass, embarrass, or injure defendant, but rather to protect its business interests. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). Thus, MCR 2.114(D)(3) was not violated.

With regard to MCR 2.114(D)(2), we note that this court rule, like MCL 600.2591(3)(a)(ii); MSA 27A.2591(3)(a)(ii), is examined under an objective standard of reasonableness. *Dauids v Davis*, 179 Mich App 72, 89; 445 NW2d 460 (1989). The court rule imposes an affirmative duty on every attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995); *Dauids, supra*. The determination of whether the reasonable inquiry standard was met depends largely on the facts and circumstances of the claim. *In re Stafford*, 200 Mich App 41; 503 NW2d 678 (1993).

The trial court here did not clearly err in finding that plaintiff had a reasonable basis to believe that the facts underlying its claim were true and that its legal position was not devoid of arguable legal merit. *Contel Systems Corp, supra*. Defendant's actions were not absolutely protected under the First Amendment. *Williams Int'l Corp v Smith*, 144 Mich App 257, 268; 375 NW2d 408 (1985), vacated on other grounds 429 Mich 81 (1987); *Woodland v Michigan Citizens Lobby*, 423 Mich 188, 207; 378 NW2d 337 (1985). Plaintiff presented sufficient evidence to the trial court to establish that the claim for tortious interference with business relations in Count II was factually and legally viable. See *Lakeshore Community Hosp, Inc v Perry*, 212 Mich App 396; 538 NW2d 24 (1995); *Prysak v R L Polk Co*, 193 Mich App 1; 483 NW2d 629 (1992); *Wood v Herndon & Herndon Investigations, Inc*, 186 Mich App 495; 465 NW2d 5 (1990); *Formall v Community Nat'l Bank*, 166 Mich App 772; 421 NW2d 289 (1988). On the basis of the record and the trial court's finding, we conclude that MCR 2.114(D)(2) was not violated with respect to the claim in Count II. We further conclude that defendant failed to establish entitlement to sanctions relating to Count I of the complaint.

Affirmed.

/s/ Robert P. Young
/s/ Clifford W. Taylor
/s/ Robert C. Livo