

STATE OF MICHIGAN
COURT OF APPEALS

SUZANNE V. PEPLIN and PAUL BURCZYCKI,

UNPUBLISHED
January 14, 1997

Plaintiffs-Appellants,

v

No. 188505
LC No. 91-002945-NZ

JON C. McLANE, SR., HARSENS ISLAND
AIRPORT DEVELOPMENT CORPORATION,
DALE R. MEHL and PATSY R. MEHL,

Defendants-Appellees,

and

ELSIE A. RATTRAY,

Defendant.

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for sanctions against plaintiffs in the amount of \$4,000 and dismissing the case with prejudice. We affirm.

Plaintiffs complained that defendant McLane's damming of a pond adjacent to plaintiff Burczycki's property flooded plaintiff Peplin's land. In accordance with the terms of a settlement agreement between the parties,¹ a culvert was constructed at defendants' expense in order to alleviate the flooding. Apparently, the culvert did not stop all the flooding, so plaintiffs sought to modify the order enforcing the settlement agreement. Notably, plaintiffs admitted to the trial court that defendants were in compliance with the terms of the settlement agreement. The trial court denied plaintiffs' motion, imposed sanctions against plaintiffs, and compelled plaintiffs to execute releases with respect to defendants. When plaintiffs objected to the language of defendants' proposed releases, the trial court granted defendants' motion for an order enforcing the previous award of sanctions and to dismiss.

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

Plaintiffs first contend that the trial court clearly erred when it awarded sanctions against them as a result of their motion to modify the order enforcing the settlement agreement. We disagree. Plaintiffs argue that because the culvert did not alleviate the flooding on plaintiff Peplin's land, the motion was well-grounded in fact, warranted by law and not interposed for an improper purpose. Plaintiffs acknowledge, however, that defendants had fully complied with the terms of the settlement agreement. We agree with the trial court's determination that, even if this compliance did not produce the intended result, defendants did not and need not guarantee that the proposed resolution would correct the flooding problem in order to have satisfied the terms of the settlement agreement. The trial court's finding that plaintiffs' motion merited sanctions was not clearly erroneous where defendants had already complied with the terms of the parties' settlement agreement. Cf. *Gramer v Gramer*, 207 Mich App 123, 126; 523 NW2d 861 (1994) (when previous settlement agreement precludes claims between the parties, it would be error *not* to award sanctions against the plaintiff).

Plaintiffs also argue that the amount of the sanctions awarded was too high because defendants incurred less than \$4,000 in costs and fees due to the motion. We disagree. Sanctions imposed pursuant to MCR 2.114(E) "may" include reasonable expenses incurred because a pleading is filed in violation of the court rule, but they are not so limited. Further, although the court rule prohibits punitive sanctions, we find nothing in the record to indicate that the trial court issued punitive sanctions. Accordingly, we hold that the award of costs and fees was justified given the 4½-year pendency of the litigation, the number of defendants, the fact that plaintiffs admitted defendants were in compliance with the terms of the settlement agreement, and the resulting unfair delay to defendants in concluding this case. See *In re Pitre*, 202 Mich App 241, 244; 508 NW2d 140 (1993).

Plaintiffs next contend that because the trial court promised to retain jurisdiction to enforce the terms of the settlement agreement and defendants had continuous and permanent obligations under the agreement, the trial court erred when it dismissed this case. We disagree. Given that the trial court found defendants to be in substantial compliance with the settlement agreement when it denied plaintiffs' motion, it was not clearly erroneous for the trial court to thereafter dismiss the case. See *Phillips v Diehm*, 213 Mich App 389, 397; 541 NW2d 566 (1995). The fact that defendants had minor ongoing obligations under the agreement does not require the trial court to retain jurisdiction forever. Furthermore, plaintiffs' argument that the trial court violated its own order when it enforced the settlement agreement is spurious. The trial court was free to issue any logical order to effectuate its judgments. MCL 600.611; MSA 27A.611.

Affirmed.

/s/ Robert P. Young
/s/ Jane E. Markey
/s/ Donald A. Teeple

¹ Defendant Rattray was not a party to the settlement agreement and is not involved in this appeal.