STATE OF MICHIGAN

COURT OF APPEALS

VERNON J. ANDREWS, GRACE M. ANDREWS, ANGELA A. RYAN, ANDREA A. LARKIN, BRIGHAM DOUGLAS and KATHY J. SCHULTZ,

Plaintiffs-Appellants,

and

CLAUDE SHIELDS, ROBERT DYKSTRA, IRENE CHANDLER, BRIAN SEYFRIED, BRUCE SEYFRIED (SUCCESSORS IN INTEREST OF D. FRISOSKY), MRS. WILLIAM CAMPBELL-STERNBERG, MR. AND MRS. KENNETH B. YOST, RUTH TICHENOR and KENNETH WILSON,

Plaintiffs,

v

MICHAEL BUCK, NANCY BUCK, BARBARA BURKE, ROSANNA GRAF, DUNA VISTA RESORT, INC., GIL HEBBLEWHITE, G. GWILLIM, VIRGINIA E. WALTHER, PENTWATER TOWNSHIP and BARNETT SURVEYING, INC.,

Defendants-Appellees.

UNPUBLISHED
May 16, 1997

No. 188669
Oceana Circuit Court
LC No. 91-004103

Before: McDonald, P.J., and Murphy and M. F. Sapala*, JJ.

PER CURIAM.

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* Recorder's Court judge, sitting on the Court of Appeals by assignment.

Plaintiffs, Vernon J. Andrews, Grace M. Andrews, Angela A. Ryan, Andrea A. Larkin, Douglas Brigham and Kathy J. Schultz (collectively "plaintiffs"), appeal as of right the January 9, 1995, amended judgment granting defendants, Pentwater Township and Barnett Surveying, Inc. (collectively "Pentwater"), actual attorney's fees and costs. We reverse and remand for further proceedings consistent with this opinion.

In January of 1991, Pentwater passed a resolution to prepare an assessor's plat for Pentwater Beach Addition No. 4. After discovering Pentwater's plans to prepare an assessor's plat, plaintiffs filed a complaint seeking, inter alia, to enjoin the implementation of the assessor's plat. Subsequently, the trial court granted summary disposition to Pentwater. The trial court reasoned that pursuant to the "Subdivision Control Act of 1967," MCL 560.201 *et seq.*; MSA 26.430(201) *et seq*., plaintiffs' cause of action was premature and should not have been made until after Pentwater's proposed assessor's plat had been filed with the appropriate governmental agency. In addition, the trial court imposed sanctions on plaintiffs because their complaint had been brought "without legal basis." Although the trial court did not state the legal grounds upon which it relied to impose sanctions on plaintiffs, a trial court can impose sanctions sua sponte on a party for filing a complaint without legal basis under MCR 2.114. See MCR 2.114 (E).

Plaintiffs first argue that they were denied due process when the trial court imposed sanctions upon them without prior notice or an opportunity to be heard. We agree. MCR 2.114 does not provide a procedure to be followed before sanctions can be imposed. *Hicks v Ottewell*, 174 Mich App 750; 436 NW2d 453 (1989). However, this Court has held that with regard to MCR 2.114, a party must receive some type of reasonable notice and opportunity to be heard prior to the imposition of sanctions. *Id.* For example, in *Hicks*, the trial court, on its own motion, imposed sanctions on an attorney and an accountant for having signed pleadings on behalf of a co-attorney without having received the authority to do so. *Id*. On appeal, the sanctioned parties argued that the trial court did not provide them with advance notice of the charges against them. *Id*. Yet, this Court found that no due process violation occurred because the sanctioned parties were given ample opportunity to be heard at a hearing prior to the trial court's imposition of sanctions. *Id*. *KLCO v Dynamic Training Corp*, 192 Mich App 39; 480 NW2d 596 (1991).

In this case, unlike in *Hicks, supra*, plaintiffs received no notice or opportunity to be heard prior to the trial court's sua sponte imposition of sanctions. As stated above, with regard to MCR 2.114, a party must still receive *some type* of reasonable notice and some opportunity to be heard prior to the imposition of sanctions. Additionally, federal case law interpreting FR Civ P 11 ("Rule 11"), the rule upon which MCR 2.114 is based,[1] supports plaintiffs position that they were denied due process of law. In *GJB & Associates, Inc v Singleton*, 913 F2d 824, (CA 10, 1990) the Court held that the trial court had violated the attorney's right to due process by imposing sanctions on him without affording him prior notice and an opportunity to be heard and in *Tom Growney Equip v Shelley Irrigation Development*, 834 F2d 833, (CA 9, 1987) the Court held that where no notice was given to the

sanctioned party of the trial court's intent to impose Rule 11 sanctions, the trial court's imposition of sanctions violated the procedural safeguards provided by the due process clause.

In sum, we conclude that the trial court's imposition of MCR 2.114 sanctions on plaintiffs was in violation of the procedural safeguards provided by the due process clause. Therefore, we reverse this case and remand it to the trial court for the purpose of allowing plaintiffs an opportunity to defend against the trial court's imposition of sanctions upon them.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiffs, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ Michael F. Sapala

[1] According to the Staff Comments to MCR 2.114, MCR 2.114 is based on the 1983 amendments to Rule 11. This Court has looked to Rule 11 in interpreting provisions of MCR 2.114. *Lloyd v Avadenka*, 158 Mich App 623; 405 NW2d 141 (1987). We also note that while Rule 11 was amended in 1993 to include new procedural requirements, MCR 2.114 has not been amended to reflect the new procedural requirements added to Rule 11. Thus, the 1993 amendments are not relevant to this appeal.