

STATE OF MICHIGAN
COURT OF APPEALS

JOYCE ANNE DABISH,

Plaintiff-Appellant,

v

RUTH DABISH YATOOMA,

Defendant-Appellee.

UNPUBLISHED

December 9, 1997

No. 198325

Oakland Circuit Court

LC No. 95-498319 CZ

Before: Whitbeck, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Plaintiff appeals by right an order of the Oakland Circuit Court, supplemental to summary disposition in favor of defendant, awarding sanctions pursuant to MCR 2.114(E) in the amount of defendant's actual costs and attorney fees based on a determination that plaintiff's complaint was frivolous. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The complaint asserts that specified items of personalty were obtained by plaintiff by bequest from her late father, Sam Dabish, that these items had been stored by defendant, plaintiff's sister, and that defendant refused to return the items unless paid for storage costs. It was eventually established to the satisfaction of the trial court that, pursuant to the will of Sam Dabish, plaintiff had received a cash bequest, and all items of personalty had been bequeathed to defendant Yatooma and Doris Dabish. An order closing the estate of Sam Dabish, which provided for precisely such a distribution of the assets of the estate, was approved as to form and substance by, inter alia, the attorney for plaintiff and two other sisters. This was the same attorney who signed plaintiff's complaint initiating the present action.¹

Accordingly, the trial court's finding that the complaint was frivolous, because not based on reasonable inquiry as to the facts, is not clearly erroneous. *Avery v Demetropoulos*, 209 Mich App 500, 503; 531 NW2d 720 (1995). However, although sanctions were properly awarded, the trial court clearly erred by failing to impose any of those sanctions on plaintiff's former attorney. We note that MCR 2.114(E) provides that, "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 . . ." Further, MCR 2.114(F) provides that, in addition to

sanctions under the rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2).

On remand, therefore, the trial court is to determine whether the sanctions for filing the frivolous complaint shall be shared in some manner by plaintiff and her former attorney, or whether all or the bulk of the fault, and thus, all the sanctions, shall be attributed to that attorney alone. Clearly, plaintiff's former attorney had a responsibility under MCR 2.114(D)(2) not to file a frivolous complaint and, if instructed to proceed notwithstanding such advice, to refuse to comply. Thus, the attorney should at least share in the liability for the sanctions under MCR 2.114.²

Award of sanctions affirmed; remanded to the Oakland Circuit Court for allocation of the liability for sanctions as between plaintiff and her former attorney. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.

¹ We note that the action should have been for claim and delivery and filed in district court.

² Conceivably, plaintiff should not personally share in this liability. As a non-attorney, the legal significance of the facts of this case may have been less apparent to her.