

STATE OF MICHIGAN
COURT OF APPEALS

GOPA SINHA DESAI,

Plaintiff,

and

EDEN J. ALLYN,

Appellant,

v

JIGNESH DESAI,

Defendant-Appellee.

UNPUBLISHED

December 8, 2011

No. 300330

Washtenaw Circuit Court

LC No. 10-000965-DM

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Appellant, plaintiff's attorney in this divorce action, appeals as of right that part of the "Opinion and Order Denying in Part and Granting in Part Plaintiff's Motion for Reconsideration" awarding \$10,044.25 in sanctions upon appellant and plaintiff jointly and severally. We affirm.

Appellant argues that the trial court abused its discretion by granting defendant's request for sanctions under MCR 2.114 and MCL 600.2591. MCR 2.114 is intended in part "to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." *FMB—First Michigan Bank v Bailey*, 232 Mich App 711, 724; 591 NW2d 676 (1998). MCR 2.114(D) and (E) allow a court to award attorney fees as a sanction for claims brought for an improper purpose or without sufficient prior research into the viability of the claims. Under MCR 2.114(D)(3), improper purposes include harassment or causing unnecessary delays or expenses. Additionally, MCR 2.114(F) provides that "a party pleading a frivolous claim ... is subject to costs as provided in MCR 2.625(A)(2)." MCR 2.625(A)(2) states, "In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." MCL 600.2591(1) allows a court to award attorney fees against parties who bring "frivolous" claims, which is defined to mean:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit. [MCL 600.2951(3)(a).]

In the present case, plaintiff's complaint for divorce was filed with the Washtenaw Circuit Court on April 19, 2010. On April 21, 2010, plaintiff obtained ex parte orders for parenting time and a restraining order regarding the disposition of assets. However, defendant had filed for divorce in the United Kingdom, where the parties had previously resided, on February 15, 2009, and had been awarded custody of the parties' two children by order of the UK court on June 10, 2009. On March 3, 2010, a decree nisi¹ was entered in the UK divorce proceeding. This decree stated in pertinent part that the marriage between the parties "has broken down irretrievably and decreed that the said marriage be dissolved unless sufficient cause be shown to the court **within six weeks** from the marking of this decree why such decree should not be made absolute." [Emphasis in original.] The complaint for divorce in Washtenaw Circuit Court was clearly frivolous because divorce proceedings had already taken place in the UK. The trial court determined that reasonable inquiry by appellant would have brought this to her attention.² Specifically, the trial court opined:

Plaintiff or Plaintiff's counsel failed to use due diligence or make a reasonable inquiry, as required in MCR 2.114(D)(3), to determine the status of the pending matter in the United Kingdom, of which they were on notice prior to filing the Complaint. Plaintiff's argument that she was confused by the proceedings in the United Kingdom is similarly disingenuous. It was incumbent upon Plaintiff to verify the status of the proceedings in the United Kingdom before needlessly increasing the cost of the litigation and wasting this Court's time and the time and expense incurred by Defendant to defend against this improperly filed Complaint.

At a minimum, plaintiff and appellant were aware of the UK proceedings and reasonable inquiry into the state of those proceedings would have revealed that a decree nisi had already been issued by the UK court. Accordingly, the trial court did not clearly err in determining that sanctions were warranted under MCR 2.114 and MCL 600.2951.

¹ The lower court record reveals that a decree nisi is an interim ruling of a divorce court that will become absolute in the absence of objections arising. The decree became absolute on April 23, 2010.

² Indeed, the document attached to plaintiff's complaint for divorce indicated that the UK court entered a "Judgment of Divorce." Thus, the very document attached to plaintiff's complaint for divorce, should have alerted appellant that additional inquiry regarding the UK proceedings was warranted before filing the divorce action.

Plaintiff also argues that the amount of costs awarded is unreasonable. The trial court's determination of the amount of the sanctions imposed is reviewed for an abuse of discretion. *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002).

Sanctions that may be imposed under MCR 2.114 include payment to the opposing parties of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. MCR 2.114(E). Under the statute, the court must award the reasonable costs and fees incurred by the prevailing party, including court costs and reasonable attorney fees. MCL 600.2591(1) and (2). In determining reasonable attorney fees, a court must consider: (1) the professional standing and experience of the lawyer; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client, *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 171-172; 712 NW2d 731 (2005), but need not detail its findings as to each factor. *Id.* at 172. If there is sufficient information on which to determine the amount of fees, an evidentiary hearing is not required. *Id.* at 171.

Plaintiff does not dispute the reasonableness of the hourly attorney rate or paralegal rate. Rather, plaintiff argues that defendant should have advised plaintiff of the resolution of the UK divorce proceeding and should have filed a motion to dismiss rather than taking plaintiff's deposition and subsequently filing a motion to dismiss. We disagree.

Plaintiff attempts to place blame on defendant for failing to minimize litigation that was wrongfully initiated by plaintiff. Nonetheless, the record supports the trial court's finding that the attorney fees and costs incurred by defendant were reasonable. Plaintiff filed her complaint for divorce on April 19, 2010, and on April 21, 2010, obtained ex parte orders for parenting time and a restraining order regarding the disposition of assets. On April 26, 2010, defendant contacted appellant and immediately requested to depose plaintiff because of the issuance of the ex parte orders and the "likely need" to file objections to the orders. In other words, defendant needed to obtain admissions from plaintiff to provide factual support for a motion to dismiss and to vacate the ex parte orders; that is, that plaintiff knew about the UK divorce proceeding and custody order and misled the court when she filed her complaint for divorce and her motions for ex parte orders in Washtenaw County. Plaintiff's deposition was taken on April 30, 2010. On May 5, 2010, defendant filed a motion to dismiss plaintiff's complaint and to dismiss the ex parte orders as a result of admissions made by plaintiff during her deposition that demonstrated that the allegations in the complaint were "woefully inadequate, inaccurate, and misleading." On May 21, 2010, the trial court dismissed the divorce action in its entirety for lack of jurisdiction.

Defense counsel submitted a detailed billing invoice. The trial court awarded defendant attorney fees for 47.05 hours in the amount of \$8,939.50, and costs in the amount of \$1,104.75, for a total award of \$10,044.25. Specifically, the trial court found the legal services rendered to have been reasonable and necessary "[g]iven that Plaintiff's Complaint was completely unnecessary and was eventually dismissed (including the rescission of all ordered entered prior to May 18, 2010)." The court found in pertinent part:

Defendant's attorney . . . submitted an itemized bill identifying the amount of time spent, that being 47.05 hours, for services rendered ... The Court finds the time reasonable in the amount of \$8,939.50. The Court declines to award attorney fees for the travel on April 30, 2010 that the Court calculates as 4 hours each way, the 3.8 hours on May 3, 2010 for parenting time issues which would have been dealt with at some point in the proceedings, and the 1.1 hours on May 31, 2010 for the preparation of the affidavit for fees and costs.

Defendant's attorney . . . submitted an itemized bill identifying the amount of expenses for Xerox, postage, transcript fees, court reporter fee, filing fees and mileage, in the amount of \$733.75.

Defendant's attorney . . . submitted an itemized bill identifying the amount of expenses incurred for her paralegal rate of \$70.00 per hour, that being 5.3 hours, for services rendered May 4, 2010 and May 13, 2010. The Court finds the time service reasonable in the amount of \$371.00.

. . . This Court does not find the hours charged by Defendant's attorney as clearly excessive. Defendant has satisfactorily submitted detailed billing records that do not appear to this Court to be excessive, redundant, or otherwise unnecessary, particularly given the nature of the issues involved and the attorney's skill, reputation and experience.

Given the itemized billing statement, the undisputed hourly rates, and the trial court's findings, we find no abuse of discretion in the trial court's finding that defendant reasonably incurred costs and expenses in the amount of 10,044.25 for defending this frivolous action.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey