

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN R. SIEB, Personal Representative of the  
Estate of MARIA EUGENIA SIEB, Deceased,

UNPUBLISHED  
April 17, 2003

Plaintiff-Appellee,

v

No. 231049  
Oakland Circuit Court  
LC No. 00-023318-CZ

VOLKSWAGENWERK  
AKTIENGESELLSCHAFT,

Defendants,

and

GERHARD REICHEL and DIETMAR K.  
HAENCHEN,

Appellants.<sup>1</sup>

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Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Appellants appeal as of right from the circuit court's order awarding plaintiff \$22,111.09 in costs and attorney fees under MCR 2.114(D). We affirm in part, reverse in part, and remand this case for further proceedings.

This appeal stems from an action brought by plaintiff and against defendant in Florida. Appellants are Michigan residents and employees of defendant. In Oakland Circuit Court, plaintiff filed a petition for the issuance of subpoenas duces tecum for the depositions of appellants.<sup>2</sup> The petition was signed by a third person acting on behalf of plaintiff's Florida attorney. The court granted the petition.

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<sup>1</sup> We note that the appellants were not shown as parties in the lower court proceedings.

<sup>2</sup> A Florida circuit court ordered the appointment of a commissioner and process server in Michigan.

Appellants moved to quash the subpoenas duces tecum. Appellants argued that the petition was not properly filed because plaintiff's Florida attorney, Michael Josephs, was not licensed to practice law in Michigan. Appellants also asserted that they had no personal knowledge of the facts of the accident and the injury which gave rise to the Florida lawsuit, that they did not have the authority to search for and produce the requested documents, and that plaintiff's request for the production of documents was oppressive.

The circuit court denied the motion to quash on the ground that it was moot because plaintiff cancelled the subpoenas. The court then proceeded to state that Josephs was not required to be admitted to the State Bar of Michigan, either fully or *pro hac vice*, in order to petition the court to issue subpoenas, under MCR 2.305(E). The court then indicated that plaintiff had cancelled the subpoenas, but the court granted plaintiff's motion to re-issue the subpoenas. Without addressing appellants' other arguments, the court concluded that appellants' motion to quash was not warranted by existing law because MCR 2.305(E) allowed Josephs to obtain the requested subpoenas notwithstanding that he had not been admitted to practice law in Michigan. On that basis, the court awarded plaintiff costs and attorney fees under MCR 2.114(D).

Appellants raise several issues on appeal, all of which are moot with the exception of the circuit court's grant of sanctions.<sup>3</sup> "We review a trial court's decision regarding the imposition of a sanction to determine if it is clearly erroneous." *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997). "The trial court's decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*; see also *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 203; 650 NW2d 364 (2002). Moreover, "[w]e review a trial court's determination of the amount of sanctions imposed for an abuse of discretion." *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

The filing of a signed pleading<sup>4</sup> that is not well-grounded in fact and law subjects the filer to sanctions under MCR 2.114(E). *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 407; 651 NW2d 756 (2002).

MCR 2.114(D) provides that the signature of an attorney or party constitutes a certification that (1) the attorney or party has read the pleading; (2) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and (3) the pleading is not interposed for any improper purpose.

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<sup>3</sup> It was learned at oral argument that the depositions at issue were never taken and that the Florida action has been settled. We need not review issues that have been mooted by the settlement and that would therefore require us to speculate and resolve hypothetical questions.

<sup>4</sup> "[T]he rules on the signing of pleadings apply to all motions, affidavits, and other papers provided for by the court rules. MCR 2.113(A)." *Bechtold v Morris*, 443 Mich 105, 106; 503 NW2d 654 (1993).

[*Michigan ex rel Saginaw County Prosecuting Attorney v Cergnul*, 203 Mich App 69, 71; 512 NW2d 49 (1993).]

Further, “[t]he imposition of a sanction under MCR 2.114 is mandatory upon the finding that a pleading was signed in violation of the court rule or a frivolous action or defense had been pleaded.” *Schadewald, supra* at 41.

The trial court did not clearly err in determining that appellants’ motion to quash the subpoenas duces tecum warranted *some* amount of sanctions, given that MCR 2.305(E) permitted Josephs to petition the court for the subpoena regardless of whether he was licensed to practice law in Michigan.<sup>5</sup> A “reasonable inquiry” by appellants should have revealed the applicability of the court rule. See MCR 2.114(D). On the record before us, however, we cannot affirm the *amount* of sanctions assessed. Indeed, appellants raised additional arguments in their motion to quash, but the court found frivolous only the argument related to Josephs’ lack of a license to practice law in Michigan. We acknowledge that the court had discretion to assess an “appropriate sanction” not necessarily in direct proportion to the “expenses incurred because of the filing of the document . . . .” See MCR 2.114(E) and *FMB – First National Bank v Bailey*, 232 Mich App 711, 726-727; 591 NW2d 676 (1999). However, we conclude that a \$22,111.09 sanction for raising only one frivolous argument in an otherwise allowable motion constitutes an abuse of discretion. We therefore remand this case and direct the trial court to assess an amount of sanctions reasonably appropriate in light of the only partially frivolous nature of the motion.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Kathleen Jansen

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<sup>5</sup> Appellants raise an issue on appeal regarding the petition for the issuance of the subpoenas having been signed by a legal secretary instead of by an attorney. However, this argument was not raised below and has therefore not been preserved for appellate review. See *Camden v Kaufman*, 240 Mich App 389, 400, n 2; 613 NW2d 335 (2000).