

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL E. TINDALL,

Plaintiff/Cross-Defendant-
Appellant,

v

STATE OF MICHIGAN, GENESEE COUNTY
CIRCUIT COURT FAMILY DIVISION,
GENESEE COUNTY FRIEND OF THE COURT,
LIVINGSTON COUNTY CIRCUIT COURT
FAMILY DIVISION, LIVINGSTON COUNTY
FRIEND OF THE COURT, MICHIGAN STATE
FRIEND OF THE COURT BUREAU, MONROE
COUNTY CIRCUIT COURT FAMILY
DIVISION, MONROE COUNTY FRIEND OF
THE COURT, WASHTENAW COUNTY
CIRCUIT COURT FAMILY DIVISION,
WASHTENAW COUNTY FRIEND OF THE
COURT, MACOMB COUNTY CIRCUIT
COURT FAMILY DIVISION, MACOMB
COUNTY FRIEND OF THE COURT,
OAKLAND COUNTY CIRCUIT COURT
FAMILY DIVISION, OAKLAND COUNTY
FRIEND OF THE COURT, WAYNE COUNTY
CIRCUIT COURT FAMILY DIVISION, and
WAYNE COUNTY FRIEND OF THE COURT,

Defendants-Appellees,

and

FINDLING LAW FIRM, PLC and DAVID M.
FINDLING,

Defendants/Cross-Plaintiffs.

Before: Talbot, P.J., and Sawyer and O'Connell. JJ.

UNPUBLISHED

April 17, 2003

No. 236134

Ingham Circuit Court

LC No. 00-091216-AZ

PER CURIAM.

Plaintiff appeals as of right the grant of summary disposition for defendants, as well as the denial of an extension of time for class certification and imposition of sanctions for filing a frivolous claim. We affirm.

As an initial matter, defendants¹ ask us to affirm the circuit court's decision denying plaintiff more time to certify the class. We agree that the circuit court properly denied this request. An order granting or denying class certification is reviewed for clear error. *Mooahesh v Dep't of Treasury*, 195 Mich App 551, 556; 492 NW2d 246 (1992). A trial court's findings are clearly erroneous if there is no evidence to support them or there is evidence to support them but this Court is left with a definite and firm conviction that a mistake has been made. *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999).

MCR 3.501(B)(1)(b) states that the time for filing a motion for class action certification may be extended "on motion for cause shown." While the circuit court erred in determining that "cause" means "good cause," *Buchanan v City Council of Flint*, 231 Mich App 536, 545; 586 NW2d 573 (1998), regardless of the standard used by the circuit court, plaintiff's case does not meet the requirements for class certification. See MCR 3.501(A). The same issues that existed at the time the complaint was filed still would have existed no matter how much time plaintiff was granted. The circumstances of the potential class members were so diverse that there were not enough questions of law or fact common to the potential class members. See MCR 3.501(A)(1)(b); *Zine, supra* at 289-290. The circuit court properly denied plaintiff's motion for an extension of time for class certification.

Plaintiff's first issue on appeal is that the circuit court erred when it determined it did not have subject matter jurisdiction over the class action. We disagree. This Court reviews the grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Whether a court has subject matter jurisdiction is a question of law reviewed de novo. *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994).

A motion under MCR 2.116(C)(4) alleges a lack of subject matter jurisdiction. *Manning v Amerman*, 229 Mich App 608, 610; 582 NW2d 539 (1998). This Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact. *Id.* Subject matter jurisdiction is the right of the court to exercise judicial power over a class of cases. *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). Whether a court has jurisdiction is determined by the nature of the claim at the beginning of the action. *Id.* In determining jurisdiction, a court must look to the true nature of the plaintiff's claim. *Manning, supra* at 613.

¹ Only defendants Macomb County Circuit Court, Monroe County Circuit Court, Livingston County Circuit Court, Genesee County Circuit Court, Washtenaw County Circuit Court, and their respective friends of the court addressed this issue.

“A superintending control order enforces the superintending control power of a court over lower courts or tribunals.” MCR 3.302(A). MCR 3.302(D)(1) states, “The Supreme Court, the Court of Appeals, and the circuit court have jurisdiction to issue superintending control orders to lower courts or tribunals.” The friend of the court is an employee of the circuit court in the judicial circuit it serves, and the duties of the office fall under the direction and supervision of the chief circuit judge. *Morrison v Richerson*, 198 Mich App 202, 212; 497 NW2d 506 (1993); see MCL 552.503(4), (5). Additionally, the state friend of the court is under the supervision and direction of the Michigan Supreme Court. MCL 552.519(1).

A circuit court has general superintending control over all inferior courts. MCL 600.615. However, the circuit courts and the friends of the courts named as defendants in the present case are not inferior to the Ingham Circuit Court. See MCL 552.519(1); MCR 3.302(A); *Morrison, supra* at 212. While plaintiff claims that his complaint sought declaratory relief, a circuit court has no jurisdiction to issue a declaratory judgment unless it has jurisdiction concerning the underlying controversy. *Boyd v Nelson Credit Ctrs, Inc*, 132 Mich App 774, 778; 348 NW2d 25 (1984). In the instant matter, the circuit court did not have subject matter jurisdiction over the underlying claim, regardless of what plaintiff called his request, because the circuit court is not a court superior to the defendants named in plaintiff’s cause of action.

Plaintiff’s second issue on appeal is that the circuit court erred when it determined that plaintiff lacked standing to bring this action. We disagree. “Whether a party has standing is a question of law. This Court reviews questions of law de novo.” *Lee v Macomb Co Bd of Comm’rs*, 464 Mich 726, 734; 629 NW2d 900 (2001).

A motion under MCR 2.116(C)(5) alleges that the “party asserting the claim lacks the legal capacity to sue.” In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000). This Court reviews the entire record to determine if the defendant is entitled to judgment as a matter of law. *Id.*

The purpose of standing requirements is to ensure that only those who have a substantial interest will be allowed to come into court and complain. *Rogan v Morton*, 167 Mich App 483, 486; 423 NW2d 237 (1988). To cross the standing threshold, plaintiff must have suffered an actual injury or there must be a “likely chance of immediate injury different from the public.” *Kuhn v Secretary of State*, 228 Mich App 319, 333; 579 NW2d 101 (1998) (citations omitted).

Plaintiff has not had any license suspended or revoked pursuant to MCL 552.628, and plaintiff is not subject to any pending proceedings. Additionally, plaintiff’s case was transferred from Wayne County; therefore, Wayne County no longer has authority to take action against him. Finally, the court-appointed receiver assigned to plaintiff’s case was not appointed pursuant to MCL 552.625b. Also, the court-appointed receiver did not seize or levy any of plaintiff’s real or personal property, nor has any order been entered for the payment of any receiver fees. Plaintiff does not have standing to bring his claims because he has not suffered an actual injury and there is not a likely chance of imminent injury. *Kuhn, supra* at 333.

Plaintiff’s final issue on appeal is that the circuit court erred when it ordered plaintiff to pay defendants sanctions because, if the circuit court lacked subject matter jurisdiction over the

proceedings, it also lacked subject matter jurisdiction to award sanctions. We disagree. A trial court's determination that a claim is frivolous is reviewed under a clearly erroneous standard. *Maryland Cas Co v Allen*, 221 Mich App 26, 33; 561 NW2d 103 (1997). A trial court's determination whether attorney fees should be awarded because of a frivolous claim is also reviewed under a clearly erroneous standard. *Phinisee v Rogers*, 229 Mich App 547, 561; 582 NW2d 852 (1998). A trial court's award of sanctions based on its inherent powers is reviewed for an abuse of discretion. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 642; 607 NW2d 100 (1999).

Once a court concludes that it lacks subject matter jurisdiction, it is powerless to do more than dismiss the action. *Eaton, supra* at 375, n 2. Any action regarding the *cause of action*, other than a dismissal, is void. *Fox v Bd of Regents of the Univ of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965). However, a court is not precluded from exercising control over conduct that is occurring in its court, i.e., sanctioning frivolous conduct. A trial court has inherent authority to impose sanctions on the basis of the misconduct of a party or an attorney. *Persichini, supra* at 639. Plaintiff was aware that he could not file a complaint when he had not been subject to the statutes, yet he did so anyway. Thus, the circuit court properly exercised its inherent authority when it sanctioned plaintiff. Additionally, the Attorney General was not representing itself. Therefore, it is entitled to receive the costs and fees awarded by the circuit court. See MCL 14.28.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Peter D. O'Connell