

STATE OF MICHIGAN
COURT OF APPEALS

ANTONIO L. THOMAS and ANTONIO L.
THOMAS ASSOCIATED,

UNPUBLISHED
January 3, 2008

Plaintiffs-Appellants,

v

No. 271031
Wayne Circuit Court
LC No. 02-220633-CZ

LA-VAN HAWKINS and URBAN CITY FOODS,
L.L.C.,

Defendants,

and

MELVIN BUTCH HOLLOWELL,

Receiver-Appellee.

Before: Saad, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's May 26, 2006 orders granting receiver Melvin Butch Hollowell's motion for sanctions and awarding sanctions in the amount of \$53,117.60. We affirm.

I

Plaintiffs first argue that the trial court lacked subject-matter jurisdiction to consider the issue of sanctions because the consideration and award of sanctions exceeded the scope of the Supreme Court's remand order. We disagree.

A challenge to subject-matter jurisdiction may be raised at any time, and presents a question of law that we review de novo. *Bass v Combs*, 238 Mich App 16, 23; 604 NW2d 727 (1999). The question of jurisdiction is always within the scope of this Court's review. *Walsh v Taylor*, 263 Mich App 618, 622; 689 NW2d 506 (2004).

Following two motion hearings, the trial court ruled that Hollowell had acted appropriately in selling defendant La-Van Hawkins' restaurant¹ and that Hollowell had not been improperly influenced by any conflicts of interest. Accordingly, the trial court found that it was unnecessary to continue the existing co-receivership, and discharged co-receiver Bryan Marcus. The trial court ordered that Hollowell's appointment as receiver continue.

Plaintiffs subsequently sought leave to appeal the trial court's order dissolving Marcus' appointment as co-receiver. This Court denied plaintiffs' application for leave to appeal. Plaintiffs then applied to the Michigan Supreme Court for leave to appeal, claiming that Marcus should not have been removed as co-receiver given Hollowell's "massive" conflict of interest. Plaintiffs attached the affidavit of their attorney, Norman Yatooma, in which Yatooma averred that he had personal knowledge of certain conflicts of interest. In lieu of granting leave, our Supreme Court remanded the matter to the trial court and directed the trial court "to reconsider whether Melvin Butch Hollowell had a conflict of interest and to make specific findings" on several questions posed in the remand order.² *Thomas v Hawkins*, 474 Mich 1054 (2006).

In accordance with the Supreme Court's remand instructions, the trial court held a two-day evidentiary hearing in March 2006 concerning the question of whether Hollowell had conflicts of interest in this case. The trial court made specific findings of fact as directed by the Supreme Court and ultimately concluded that "Mr. Hollowell did not have a conflict of interest and . . . he should not be disqualified as receiver" On March 31, 2006, after considering the trial court's findings of fact and conclusions of law, the Supreme Court denied plaintiffs' application for leave to appeal and dissolved its stay of trial court proceedings. *Thomas v Hawkins*, 474 Mich 1101 (2006). The Supreme Court also denied plaintiffs' motion for reconsideration.

We acknowledge that the trial court lacked the authority to grant sanctions at the time of its March 2006 evidentiary hearing. The Supreme Court had ordered a stay of all trial court proceedings pending its consideration of plaintiffs' application for leave to appeal. Moreover, because the Supreme Court's order set forth specific, limited questions to be addressed by the trial court on remand, any consideration or award of sanctions would have exceeded the scope of the remand order. See *K & K Constr, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544; 705 NW2d 365 (2005) (stating that "[w]hen an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order"). As of March 31, 2006, however, the Supreme Court's stay was dissolved.

When the Michigan Supreme Court denies leave to appeal, this Court's decision becomes final. MCR 7.302(G)(3); *People v Phillips*, 416 Mich 63, 74-75; 330 NW2d 366 (1982). When this Court denies leave to appeal, jurisdiction remains with the trial court. MCR 7.208(A)

¹ Hawkins' company owned an interest in the restaurant Sweet Georgia Brown.

² The Supreme Court previously granted a stay of all trial court proceedings pending the outcome of its decision on plaintiffs' application for leave to appeal, and ordered that the proceeds of the sale of Hawkins' restaurant not be disturbed during the pendency of the stay.

(stating that the trial court is divested of jurisdiction only “[a]fter a claim of appeal is filed *or leave to appeal is granted*”) (emphasis added). Therefore, when the Supreme Court denied leave to appeal, this Court’s denial of plaintiffs’ application for leave to appeal became final, and the trial court was not divested of jurisdiction in this matter. In other words, the trial court was perfectly authorized to consider and award sanctions *after* the Supreme Court denied leave to appeal on March 31, 2006.³

Although Hollowell filed his motion for sanctions in March of 2006, the trial court took no action on the motion until April 7, 2006 and issued its orders granting sanctions on May 26, 2006. Accordingly, all trial court action on Hollowell’s motion for sanctions occurred after the Supreme Court had denied plaintiffs’ application for leave to appeal and dissolved its stay of trial court proceedings. Therefore, the trial court had subject-matter jurisdiction to consider and award the sanctions at issue in this case.

II

Plaintiffs next argue that the trial court erred in granting sanctions pursuant to MCR 2.114(E) based on documents filed in this Court and the Michigan Supreme Court and on oral assertions and statements made by plaintiffs’ counsel before the trial court. We find that, although the trial court erred in granting sanctions pursuant to MCR 2.114(E) based on the oral assertions and statements made by plaintiffs’ counsel, the trial court had the authority to award sanctions pursuant to MCR 2.114(E) based on improprieties contained in documents filed in this Court and the Michigan Supreme Court. Alternatively, the sanctions at issue were awardable pursuant to the trial court’s inherent authority to sanction parties and their attorneys.

Whether a trial court has authority to impose sanctions in a specific case is a question of law that we review *de novo*. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 637; 607 NW2d 100 (1999). Interpretation of the court rules also presents a question of law that we review *de novo*. *Dessart v Burak*, 470 Mich 37, 39; 678 NW2d 615 (2004). The court rules are construed in the same manner as statutes. *Marketos v American Employers Ins Co*, 465 Mich 407, 413; 633 NW2d 371 (2001).

Hollowell argued below that sanctions were awardable in this case pursuant to MCR 2.114(E) because plaintiffs had made misstatements and inaccurate assertions, both at oral argument and in signed pleadings, concerning Hollowell’s alleged relationships with Hawkins, Hawkins’ ex-wife, and Frank Taylor.⁴ Hollowell argued that plaintiffs’ misstatements and

³ We note that even when this Court has granted leave to appeal, the trial court still retains jurisdiction to impose certain costs and attorney fees. MCR 7.208(I).

⁴ Hollowell additionally argued that sanctions were awardable in this case pursuant to MCR 2.313 because plaintiffs had failed to comply with his interrogatories and document requests. The trial court’s orders granting sanctions in this case state simply that sanctions were awarded for “all of the reasons set forth on the record.” On the record, the trial court discussed only its authority to award sanctions under MCR 2.114(E). Therefore, it does not appear that any of the sanctions awarded in this case were actually granted under MCR 2.313. Moreover, on appeal,
(continued...)

assertions directly led to the Supreme Court's remand order and the trial court's extensive evidentiary hearing in March of 2006. According to Hollowell, none of the costs associated with the evidentiary hearing would have been incurred absent plaintiffs' misstatements and inaccurate assertions concerning his alleged personal relationships and purported conflicts of interest.

At the hearing on Hollowell's motion for sanctions, the trial court found that sanctions were awardable in this case under MCR 2.114(E):

I am satisfied after extensive review of the record that the allegations regarding the relationships between Hawkins, Taylor and Hollowell were not well grounded in fact as required by [MCR] 2.114(D)(2). Therefore, receiver Hollowell's motion for sanctions under [MCR] 2.114(E) is granted.

The trial court based its decision to grant sanctions under MCR 2.114(E) on documents filed in this Court and the Michigan Supreme Court, and on statements made by plaintiffs' attorney at oral argument.

MCR 2.114 provides in pertinent part:

(A) Applicability. This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules. See MCR 2.113(A). In this rule, the term "document" refers to all such papers.

* * *

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document 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 document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. 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, which

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neither party addresses the alleged discovery violation or the court's power to grant sanctions under MCR 2.313. Therefore, the question of whether the sanctions awarded in this case would have been proper under MCR 2.313 has not been properly presented for appellate review, and we decline to address the issue. MCR 7.212(C)(7); *Silver Creek Twp v Corso*, 246 Mich App 94, 99-100; 631 NW2d 346 (2001).

may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages. [Emphasis in original.]

We agree with plaintiffs' argument that sanctions awarded under MCR 2.114(E) may not be premised on oral statements. According to the plain language of the court rule, sanctions are permitted under MCR 2.114(E) only when "a document is signed in violation of this rule" An oral assertion or misrepresentation is necessarily different than a document signed in violation of the rule. Moreover, Federal Rule of Civil Procedure 11 "is similar to Michigan's MCR 2.114, which requires an attorney or party to sign pleadings, motions, and other papers filed with the court and provides for sanctions when attorneys or parties sign frivolous pleadings." *In re Attorney Fees & Costs*, 233 Mich App 694, 706; 593 NW2d 589 (1999). Therefore, in interpreting MCR 2.114, Michigan courts may look to federal case law interpreting Federal Rule of Civil Procedure 11. See, e.g., *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 166 n 3; 712 NW2d 731 (2005); *Michigan Bell Tel Co v Sfat*, 177 Mich App 506, 514; 442 NW2d 720 (1989). According to *Christian v Mattel, Inc*, 286 F 3d 1118, 1130 (CA 9, 2002), "[w]hile Rule 11 permits the [United States] district court to sanction an attorney for conduct regarding 'pleading[s], written motion[s], and other paper[s]' that have been signed and filed in a given case . . . , it does not authorize sanctions for, among other things, discovery abuses or misstatements made to the court during an oral presentation." We conclude that MCR 2.114(E) similarly "does not authorize sanctions for, among other things . . . misstatements made to the court during an oral presentation." *Id.*

We now turn to plaintiffs' argument that MCR 2.114(E) does not allow the trial court to impose sanctions based on appellate-court filings. As noted above, sanctions are permitted under MCR 2.114(E) only when "a document is signed in violation of this rule" The rule makes no distinction between documents filed in a trial court and those filed in an appellate court. We must not read into the court rule a distinction that is not contained within the clear language of the rule itself. *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999).

Indeed, MCR 2.114 applies not only to "pleadings, motions, [and] affidavits," but also to all "other papers provided for by these rules." MCR 2.114(A). The phrase "other papers provided for by these rules" is broad enough to encompass papers filed in the appellate courts. In awarding sanctions under MCR 2.114(E), the trial court specifically relied on the baseless representations of fact contained in: (1) plaintiffs' motion for stay of lower court proceedings filed in this Court; (2) plaintiffs' application for leave to appeal filed in this Court; (3) plaintiffs' motion for immediate consideration filed in this Court; (4) the affidavit of plaintiffs' trial attorney, Norman Yatooma, filed in this Court and in the Supreme Court; (5) plaintiffs' emergency motion for stay of lower court proceedings filed in the Supreme Court; and (6) plaintiffs' application for leave to appeal filed in the Supreme Court. The Michigan Court Rules specifically provide for the filing of such documents in this Court and in the Michigan Supreme Court. See MCR 7.209 (providing that this Court may enter a stay of lower court proceedings pending appeal); MCR 7.205 (providing for applications for leave to appeal in this Court); MCR

7.211(C)(6) (providing for motions for immediate consideration in this Court); MCR 2.114(A) (providing that MCR 2.114 applies to all affidavits); MCR 7.302(H) (providing that MCR 7.209 applies to the Supreme Court, which may enter a stay of lower court proceedings pending appeal); MCR 7.302 (providing for applications for leave to appeal in the Supreme Court). Therefore, based on the plain language of MCR 2.114(A), and the fact that the Michigan Court Rules plainly provide for the specific types of appellate filings cited by the trial court in this case, we conclude that MCR 2.114(E) authorized the court to impose sanctions for the baseless misrepresentations of fact contained in plaintiffs' documents filed in the appellate courts.

Furthermore, this Court has implicitly recognized that MCR 2.114(E) permits the trial court to impose sanctions based on documents filed on appeal. *BJ's & Sons Constr Co, Inc v VanSickle*, 266 Mich App 400, 413-414; 700 NW2d 432 (2005) (remanding to the trial court for imposition of sanctions because, among other things, "plaintiffs violated MCR 2.114(D) and (E) by submitting documents with [counsel's] signature in furtherance of this frivolous, vexatious appeal"). While we acknowledge that in *BJ's & Sons Constr* it was this Court—and not the trial court—that initially determined that the appeal at issue was frivolous and vexatious, we find no material distinction between the facts in that case and those in the instant case. As this Court noted in *BJ's & Sons Constr*, "because the trial court has been intimately involved with this case, much more so than the appellate court . . . the trial court is in the best position to make an assessment of, and to hold a hearing regarding, sanctions." *Id.* at 414 n 15. Similarly, the trial court is necessarily more familiar with the unique facts of the instant case than is this Court or the Supreme Court. We conclude that the trial court was authorized to award sanctions under MCR 2.114(E) on the basis of misstatements and baseless assertions contained in documents plaintiffs filed in this Court and the Michigan Supreme Court.

As an alternative ground for affirmance, Hollowell argues that the trial court was authorized to award the sanctions in this case pursuant to its inherent authority to sanction litigants and their attorneys.⁵ As Hollowell correctly argues, trial courts have the inherent authority to impose sanctions against litigants and their counsel for misconduct. *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006). Plaintiffs respond that notwithstanding the trial court's inherent power to sanction parties and attorneys, this Court should decline to consider Hollowell's argument in this regard because it is unpreserved for review.

An appellee may argue alternative grounds for affirmance without filing a cross appeal as long as he does not seek to enlarge the relief granted by the trial court. *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994); *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998). By raising this alternative ground for affirmance, Hollowell does not seek to enlarge the relief granted below. The authority to impose sanctions for litigant

⁵ Hollowell further argues that the sanctions granted in this case were alternatively awardable pursuant to MCL 600.2591. This argument is unpreserved because it was not raised below or addressed by the trial court, *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994), and we decline to address it. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234-235; 507 NW2d 422 (1993).

misconduct “is a creature of the ‘clean hands doctrine’ and, despite its origins, is applicable to both equitable and legal damages claims.” *Maldonado, supra* at 389 (quotations and citation omitted). Because the “clean hands doctrine” is designed to preserve the integrity of the judiciary, this Court may apply it sua sponte on appeal, even when it has not been raised by the parties or by the court below. *Stachnik v Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975). Since the trial court’s inherent authority to impose sanctions derives from the “clean hands doctrine,” *Maldonado, supra* at 389, we may consider this issue on appeal despite the fact that Hollowell did not raise it before the trial court, see *Stachnik, supra* at 382.

As noted above, “trial courts possess the inherent authority to sanction litigants and their counsel . . .” *Maldonado, supra* at 376; see also *Persichini, supra* at 639-640. “This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Maldonado, supra* at 376. We conclude that the trial court possessed the inherent authority to sanction plaintiffs and their counsel for making baseless claims and ungrounded representations of fact both at oral argument and in furtherance of their efforts to prolong this matter by way of unfounded applications for leave to appeal. *Id.*; *Persichini, supra* at 639-640.

III

Plaintiffs next argue that the trial court erred in concluding that their representations concerning Hollowell’s alleged personal relationships and purported conflicts of interest were not well grounded in fact as required by MCR 2.114(D). We disagree.

We review for clear error the trial court’s determination whether sanctions are awardable under MCR 2.114(D) and (E). *McDonald v Gd Traverse Co Election Comm*, 255 Mich App 674, 697, 701-702; 662 NW2d 804 (2003); *Contel Sys Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). A decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

Under MCR 2.114(D), the signature of a party or an attorney is a certification that the document is “well grounded in fact and . . . warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law” and that “the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” The filing of a signed document that is not well grounded in fact and law subjects the filer to sanctions pursuant to MCR 2.114(E). *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 407; 651 NW2d 756 (2002). MCR 2.114(E) states that the trial court “shall” impose sanctions upon finding that a document has been signed in violation of the rule. *Contel Sys Corp, supra* at 710. Therefore, if a violation of MCR 2.114(D) has occurred, the sanctions provided for by MCR 2.114(E) are mandatory. *Id.*

Pursuant to MCR 2.114(D), an attorney is under an affirmative duty to conduct a reasonable inquiry into both the factual and legal basis of a document before it is signed. *LaRose Market, Inc v Sylvan Ctr, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995). “The reasonableness of the inquiry is determined by an objective standard and depends upon the

particular facts and circumstances of the case.” *Id.* “That the alleged facts are later discovered to be untrue does not invalidate a prior reasonable inquiry.” *Attorney Gen v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). However, “[t]he attorney’s subjective good faith is irrelevant.” *Id.*

When a party presents sufficient evidentiary support for a position or argument, it cannot generally be said that the party’s position or argument was not well grounded in fact as required by MCR 2.114(D). See *Schadewald v Brulé*, 225 Mich App 26, 42; 570 NW2d 788 (1997). A party’s failure to present any evidence in support of its bare assertions of fact, however, is indicative that those assertions were not well grounded in fact when made. In this case, plaintiffs presented only one witness at the two-day evidentiary hearing ordered by our Supreme Court. That witness was former co-receiver Marcus, who testified that he did not know whether the sale of Hawkins’ restaurant had been an “arms-length bidding process,” that he had “never sold a restaurant,” that he did not know which brokers typically sold restaurants in the Detroit area, and that he had not been familiar with the particular assets of the restaurant.

Some of the most egregious misrepresentations of fact and baseless assertions concerning Hollowell’s alleged conflicts of interest in this matter were contained in Yatooma’s affidavit. Yatooma was present in court throughout the evidentiary hearing and cross-examined Hollowell’s witnesses on behalf of plaintiffs. However, despite his awareness that the sole and specific purpose of the evidentiary hearing was to determine whether Hollowell had conflicts of interest, Yatooma never testified himself, and did not present any evidence to substantiate or corroborate his own averments concerning Hollowell’s alleged conflicts of interest. The complete absence of testimony and other evidence supporting plaintiffs’ allegations demonstrates that plaintiffs’ representations concerning Hollowell’s alleged conflicts of interest were “made without any inquiry into the facts, reasonable or otherwise.” *In re Pitre*, 202 Mich App 241, 244; 508 NW2d 140 (1993).

Plaintiffs presented little or no evidence to corroborate or otherwise support their allegations that Hollowell had conflicts of interest in this case. In light of the overwhelming absence of evidentiary support for plaintiffs’ assertions of fact concerning Hollowell’s alleged conflicts of interest, we cannot conclude that the trial court clearly erred in determining that plaintiffs’ documents were not “well grounded in fact” as required by MCR 2.114(D). *McDonald*, *supra* at 702; *Contel Sys Corp*, *supra* at 711. The trial court properly imposed sanctions against plaintiffs and their counsel under MCR 2.114(E). *Id.* at 710-711; see also *John J Fannon Co*, *supra* at 170.

IV

Lastly, plaintiffs argue that the trial court abused its discretion by awarding sanctions in the amount of \$53,117.60. Again, we disagree.

We review for an abuse of discretion the trial court’s decision concerning the particular amount of sanctions awardable under MCR 2.114. *Id.* at 171; *Maryland Cas Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997). An abuse of discretion occurs only when the trial court’s decision falls outside the range of reasonable and principled outcomes. *Maldonado*, *supra* at 388. The “abuse of discretion standard acknowledges that there will be circumstances

in which there will be no single correct outcome,” and indicates that the reviewing court owes substantial deference to the trial court’s judgment. *Id.*

As noted above, if the trial court finds that a document has been signed in violation of MCR 2.114(D), it must award sanctions pursuant to MCR 2.114(E). *Contel Sys Corp, supra* at 710. The sanctions awardable under MCR 2.114(E) include all reasonable expenses incurred because of filing the documents that contained the baseless or unfounded assertions of fact. *Maryland Cas Co, supra* at 32. This includes reasonable attorney fees. *Id.*

Plaintiffs contend that the attorney fees awarded pursuant to MCR 2.114 in this case were “excessive and unreasonable.” In determining the reasonableness of attorney fees awardable under MCR 2.114, the trial court must consider several factors, including:

“(1) the professional standing and experience of the attorney; (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, supra* at 171-172, quoting *Wood v DAIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), in turn quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973).]

A trial court is not, however, required to give detailed findings regarding each factor. *John J Fannon Co, supra* at 172.

Hollowell submitted billing information and affidavits to establish that he was entitled to attorney fees in the amount of \$53,117.60. Plaintiffs presented little or no independent evidence of their own to counter Hollowell’s claim in this regard. The trial court considered data concerning the median hourly rates charged by attorneys in the Detroit area and concluded that an hourly rate of \$360 and attorney fees in the amount of \$53,117.60 were reasonable in this case. Plaintiffs admitted at oral argument that, according to their own data, \$305 was a reasonable hourly rate for an attorney of the same experience as Hollowell’s lead counsel. Moreover, because \$305 represented an “average,” plaintiffs’ counsel admitted that some attorneys of the same experience level necessarily charge more than \$305. Therefore, we find that the hourly rate used by the trial court in assessing the amount of sanctions in this case was reasonable. The \$55 deviation between \$305 and \$360 did not amount to an abuse of discretion. *Maryland Cas Co, supra* at 32. Further, even assuming that plaintiffs are correct in arguing that Hollowell’s other attorney had less experience than his lead counsel, the trial court did not reach a decision falling outside the range of reasonable and principled outcomes. *Maldonado, supra* at 388.

In addition, plaintiffs’ argument on appeal that the amount of sanctions should be reduced by approximately two-thirds, or 67 percent, is without merit. We fully acknowledge that the Supreme Court’s remand order specifically set forth eight questions to be considered during the trial court’s evidentiary hearing. Hollowell correctly argues, however, that these eight questions were closely interrelated, and were all designed to assist the trial court in determining whether conflicts of interest existed in this case. As the trial court noted, “all eight” of the remand issues “bore on the issue of conflict [of interest].” Therefore, contrary to plaintiffs’ argument, the baseless misrepresentations of fact concerning Hollowell’s alleged conflicts of interest directly related to all eight questions identified in the remand order.

In light of plaintiffs' failure to adequately rebut the affidavits and billing statements provided by Hollowell below, we cannot conclude that the trial court abused its discretion in awarding sanctions in the amount of \$53,117.60.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane M. Beckering