

STATE OF MICHIGAN
COURT OF APPEALS

MONROE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE, INC. d/b/a
MONROE COUNTY REPUBLICAN PARTY,

UNPUBLISHED
September 16, 2014

Plaintiff/Counter Defendant-
Appellee,

and

MICHIGAN REPUBLICAN PARTY and
REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs-Appellees

V

DEAN S. HAZEL,

Defendant/Counter Plaintiff-
Appellant,

and

REPUBLICAN PARTY,

Defendant/Counter Plaintiff.

No. 315882
Monroe Circuit Court
LC No. 12-032864-CZ

Before: METER, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

In this dispute over the improper use of a trademark, defendant, Dean Hazel, appeals by right the trial court's order granting plaintiffs' motion for costs and attorney fees. Because we conclude there were no errors warranting relief, we affirm.

In 2011, Hazel incorporated a nonprofit that he named the "Republican Party" and then tried to solicit donor funds using names and marks commonly associated with plaintiffs. Plaintiffs sued Hazel for infringing their registered trademarks, service marks, and names. The trial court agreed with plaintiffs and entered an order permanently enjoining Hazel and his corporation from using their names, trademarks, service marks, and symbols.

Hazel argues on appeal that the trial court lacked jurisdiction to award costs and fees because plaintiffs have not registered to do business under a fictitious name as required by MCL 445.1(1) and cannot prevent him from using the disputed trademarks and service marks because he, as a Republican, holds a property interest in those marks. We decline to address these collateral attacks on the trial court's injunction.

Hazel has appealed in this Court three times since the trial court issued its injunction. He appealed by right the trial court's injunction in March 2013, but this Court dismissed the appeal as untimely.¹ He then applied for leave to appeal the trial court's injunction in July 2013, which application this Court denied for lack of merit.² Finally, this appeal involves the propriety of the trial court's order, entered in April 2013, compelling Hazel to pay plaintiffs' costs and attorney fees.

Only a final order may be appealed by right to this Court. MCR 7.203(A). Under MCR 7.202(6)(a), both the order awarding costs and fees and the order establishing the permanent injunction qualify as final orders. However, an appeal from a final order is "limited to the portion of the order with respect to which there is an appeal of right." MCR 7.203(A)(1). Thus, although previous non-final orders merge into the final order, see *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992), the order at issue here is final only with respect to the award of costs and fees. All other substantive issues merged into the previous final order. And this Court implicitly considered and rejected Hazel's claims of error with regard to that prior order when it declined to grant leave to appeal.

In attempting to raise these additional claims of error, Hazel frames them in jurisdictional terms. A challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal. *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996). But there is a difference between the existence of jurisdiction and the exercise of jurisdiction; although a party may challenge the existence of jurisdiction at any time, a challenge to the exercise of jurisdiction must be done on direct appeal. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993). A court has subject matter jurisdiction over a dispute if "the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *Id.* at 444.

Hazel's argument on appeal does not concern whether the trial court had jurisdiction over the claim at issue. Instead, he challenges the trial court's exercise of jurisdiction given plaintiffs' purported failure to comply with MCL 445.5. The prohibition stated under MCL 445.5 does not alter a trial court's jurisdiction to hear and decide claims that might be implicated by that statute; rather, it governs the trial court's exercise of jurisdiction with regard to noncompliant parties. Therefore, this claim of error does not implicate the trial court's subject-matter jurisdiction.

¹ See *Monroe Co Republican Executive Committee Inc v Hazel*, unpublished order per curiam of the Court of Appeals, entered April 8, 2013 (Docket No. 315357).

² See *Monroe Co Republican Executive Committee Inc v Hazel*, unpublished order per curiam of the Court of Appeals, entered December 30, 2013 (Docket No. 317319).

Hazel also asserts that the trial court lacked authority to grant relief to plaintiffs because they were an association and the dispute was essentially an internal squabble between the association's members. With this argument, Hazel essentially challenges plaintiffs' standing to sue. But standing is a separate doctrine from subject matter jurisdiction, and standing deals with the exercise of jurisdiction rather than the lack of jurisdiction. See *Glen Lake-Crystal Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 528; 695 NW2d 508 (2004). Ultimately, plaintiffs sued for trademark infringement and, because Michigan's circuit courts are courts of general jurisdiction, see *Bowie v Arder*, 441 Mich 23, 50; 490 NW2d 568 (1992), and MCL 429.42(b) established a private right of action for trademark and service mark infringement, the trial court had subject-matter jurisdiction over the claims.

Because Hazel's claims involve a collateral attack on the trial court's exercise of discretion rather than the existence of jurisdiction, he cannot raise those claims in the present appeal. Moreover, because the trial court had jurisdiction over the subject-matter, it also had jurisdiction to award costs and fees. Accordingly, under MCR 7.203(A)(1) we must limit our review to whether the trial court erred when it exercised that discretion and awarded costs and fees.

On appeal, Hazel argues that the trial court erred when it awarded plaintiffs their courier costs, specifically, he maintains that plaintiffs' Federal Express expenses were unreasonable and unauthorized by statute. Although the court did not state why it awarded attorney fees and costs to plaintiffs, the record shows that the trial court ordered the award after plaintiffs moved for costs and attorney fees on the basis of Hazel's continued frivolous attempts to fight the injunction. This Court reviews a trial court's decision on a motion for attorney fees for an abuse of discretion, but reviews the factual findings underlying the trial court's decision for clear error. *Edge v Edge*, 299 Mich App 121, 127; 829 NW2d 276 (2012).

Generally, absent an exception, each party in a civil dispute bears its own attorney fees. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). However, a party may recover attorney fees and costs when the adverse party maintains frivolous claims or defenses. MCR 2.625(A)(2); MCR 2.114(F); MCL 600.2591. Hazel does not dispute the court's decision to assess fees and costs, but rather the reasonableness of plaintiffs' courier costs. MCL 600.2591(2) provides that the "amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees." Thus, in order to warrant relief, Hazel must establish that the Federal Express expenses were unreasonable.

Hazel does not dispute that Federal Express actually performed the services at issue and does not challenge whether the fees that it charges for those services are unreasonable by comparison to its competitors. Rather, he challenges the overall quality of the service and notes that plaintiffs could have used an altogether different method of delivery that would have resulted in less expense. Hazel's personal satisfaction with the quality of the service has no bearing on the reasonableness of the fees actually charged and the trial court could properly find that a direct courier service was reasonable given the circumstances attending this litigation. For that reason, we cannot conclude that the trial court abused its discretion when it included the courier fees in the award.

There were no errors warranting relief.

Affirmed. As the prevailing parties, plaintiffs may tax costs. MCR 7.219(A).

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly