

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of HELEN M. KRANE TRUST.

WESLEY W. KRANE, Successor Trustee of the
HELEN M. KRANE TRUST,

Appellant,

v

NATALIE KRANE, DOUGLAS W. KRANE,
Successor Trustee of the HELEN M. KRANE
TRUST, DONALD G. KRANE, and STEPHANIE
KRANE-BOEHMER,

Appellees.

In re Estate of HELEN M. KRANE TRUST.

WESLEY W. KRANE, Successor Trustee of the
HELEN M. KRANE TRUST, NATALIE KRANE,
DOUGLAS KRANE, Successor Trustee of the
HELEN M. KRANE TRUST, DONALD G.
KRANE, and STEPHANIE KRANE-BOEHMER,

Appellees,

v

MCALPINE & ASSOCIATES, P.C.,

Appellant.

UNPUBLISHED
February 4, 2014

No. 312236
Oakland Probate Court
LC No. 2010-332778-TV

No. 312264
Oakland Probate Court
LC No. 2010-332778-TV

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

In Docket No. 312236, appellant Wesley W. Krane appeals as of right the probate court's order awarding appellee Natalie Krane \$22,671 in costs and attorney fees as sanctions pursuant to MCL 600.2591 (frivolous defense to a civil action) and MCR 2.114 (court-filed document signed absent well-grounded facts or a basis in law). In Docket No. 312264, appellant McAlpine & Associates, P.C. (McAlpine), appeals as of right the same probate court order that awarded Natalie Krane \$22,671 in costs and attorney fees as sanctions. McAlpine represented Wesley Krane for part of the proceedings in probate court, and the probate court jointly sanctioned them under MCL 600.2591 and MCR 2.114. We reverse and remand for entry of an order denying sanctions to Natalie Krane or any party.

With respect to a request for attorney fees and costs under MCL 600.2591 and MCR 2.114, we review for an abuse of discretion the trial court's ruling on the request. *Edge v Edge*, 299 Mich App 121, 127; 829 NW2d 276 (2012). However, the court's underlying factual findings, including a finding of frivolousness, are reviewed for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002); *Edge*, 299 Mich App at 127. Issues regarding the interpretation of MCL 600.2591 and MCR 2.114 are reviewed de novo on appeal. *Id.*

“Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.” MCL 600.2591(1). A defense to a civil action is frivolous if “[t]he party's primary purpose in . . . asserting the defense was to harass, embarrass, or injure the prevailing party[.]” or “[t]he party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true[.]” or “[t]he party's legal position was devoid of arguable legal merit.” MCL 600.2591(3)(a).

MCR 2.114 concerns the execution of court documents and applies to all pleadings, motions, affidavits, and other papers mandated by the court rules. MCR 2.114(A). The court rule provides in pertinent part:

(D) 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) 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 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.

The question whether a claim or defense is frivolous is evaluated at the time the claim or defense was raised. *In re Costs & Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002). The objective of sanctions “is 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 Mich Bank v Bailey*, 232 Mich App 711, 723; 591 NW2d 676 (1998). In *Louya v William Beaumont Hosp*, 190 Mich App 151, 163; 475 NW2d 434 (1991), this Court observed:

We will not construe MCL 600.2591 in a manner that has a chilling effect on advocacy or prevents the filing of all but the most clear-cut cases. Nor will we construe the statute in a manner that prevents a party from bringing a difficult case or asserting a novel defense, or penalizes a party whose claim initially appears viable but later becomes unpersuasive. Moreover, an attorney or party should not be dissuaded from disposing of an initially sound case which becomes less meritorious as it develops because they fear the penalty of attorney fees and costs under this statute.

With respect to MCR 2.114 and MCL 600.2591, “[n]ot every error in legal analysis constitutes a frivolous position” and “merely because this Court concludes that a legal position asserted by a party should be rejected does not mean that the party was acting frivolously in advocating its position[,]” especially in regard to legal issues that are complex and not easily resolved. *Kitchen*, 465 Mich at 662-663.

We finally note that MCR 2.625(A)(2), which solely addresses costs, provides that “[i]n 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.”

As an initial matter, the probate court had included in its award of sanctions, attorney fees and costs incurred with respect to appeals to this Court and a circuit court action for superintending control that arose during the probate court litigation and that were associated with the controversy being handled by the probate court. McAlpine argues that the probate court lacked the authority to include those attorney fees and costs as part of the sanctions, and we agree. This Court has definitively held that a trial court lacks jurisdiction to tax costs and award attorney fees under MCL 600.2591 and MCR 2.114 that are incurred on appeal. *Edge*, 299 Mich App at 128-135 (“[T]he circuit court abused its discretion by awarding plaintiff attorney fees and costs under MCR 2.114, MCR 2.625(A)(2), and MCL 600.2591.”). In regard to the superintending control litigation in the circuit court, MCL 600.2591(1) gives “the court that conducts the civil action” the authority to award sanctions “in connection with the civil action.” This language effectively authorized the circuit court alone to award sanctions under MCL 600.2591 relative to the superintending control litigation, not the probate court. To read the phrase “in connection with” so broad as to permit a court to reach litigation in a different court for purposes of awarding sanctions would be tantamount to authorizing courts to intrude on each other’s jurisdiction. See *Edge*, 299 Mich App at 134 (“[T]he circuit court was not the court that conducted the appeal; therefore, it could not award sanctions under MCL 600.2591 for a

frivolous appeal.”). Further, the general nature of MCR 2.114 supports the conclusion that a court’s authority to award sanctions for improperly executing and filing a document extends only to those documents filed in the action over which the court actually presides. The probate court abused its discretion in awarding attorney fees and costs incurred in the appeals and the circuit court action for superintending control.

Wesley and McAlpine (hereafter “appellants”) both argue that MCL 600.2591 is inapplicable because it pertains solely to a frivolous “defense to a *civil action*” and Natalie Krane filed a “petition,” not a civil action. We find it unnecessary to address and decide this issue, given our conclusion, explained below, that the probate court clearly erred in finding that appellants engaged in a frivolous defense, assuming MCL 600.2591’s general applicability to the case. For purposes of this opinion and ease of reference, we shall hereafter simply use the term “frivolous” when discussing the standards in both MCL 600.2591 and MCR 2.114.

Next, appellants argue that the probate court erred in awarding sanctions predicated on their challenge of a 2007 handwritten trust addendum supposedly drafted and executed by the decedent Helen M. Krane, who was the mother of Wesley, Donald, and Douglas Krane.¹ We agree. Wesley testified that the signature on the addendum looked like his mother’s signature, but he questioned the validity of the addendum. However, he never took the stance that his mother absolutely did not prepare or execute the addendum; rather, he simply indicated that he could not say for sure one way or the other regarding the validity of the addendum. The addendum was certainly suspicious, and the circumstances surrounding the addendum raised some reasonable questions about its validity.

The decedent had already executed two amendments of the trust years earlier, and she did so in proper form through an attorney (typed, witnessed, and notarized). The 2007 addendum reflected a deviation from that course or practice. Further, the decedent used fairly sophisticated terminology in the addendum, e.g., “fair market value,” “appraised value,” and “third party registered appraiser,” even though she lacked a background that would explain her knowledge and understanding of these terms. Douglas Krane asserted that he discussed these terms with his mother and explained them to her, but Douglas’s involvement itself raised questions. The decedent allegedly made the addendum known only to Douglas, to the exclusion of all other family members, even though she had named Wesley as successor trustee relative to her trust. By way of the second amendment of the trust, which had been validly executed and was not in dispute, Douglas was completely excluded as a beneficiary. And while his daughter Natalie was to take his share, the share had to be reduced by the outstanding balance on a loan that had been made to Douglas by his parents years earlier, which was a considerable sum. In the 2007 addendum, Douglas was to receive a one-third interest in the trust estate, except as to the proceeds of a sale of the decedent’s house, with a one-third share of those proceeds to go to Natalie, as well as Wesley and Donald. The addendum made the debt owed by Douglas, on a promissory note that he had signed, a shared responsibility of all three brothers, effectively

¹ Douglas Krane is the father of Natalie Krane.

forgiving a sizable debt owed by Douglas. The addendum improved the position of Douglas and his daughter Natalie.

Additionally, as the litigation proceeded, it was discovered that there were two different versions of the addendum, which was never fully and clearly explained by Douglas. Also, Douglas's story changed regarding whether he witnessed his mother execute the addendum. We also note that, with respect to the subject of witnesses identifying the decedent's handwriting in the addendum, including Natalie, merely because the decedent may have written the addendum did not necessarily mean that it was valid, as it could have been the result of undue influence. Douglas did testify that he had discussed with his mother possible changes to the trust.

As trustee, Wesley had a fiduciary duty to all of the beneficiaries to properly and prudently administer the trust and disperse the trust assets. See generally, MCL 700.7801 *et seq.*; MCL 700.1501 *et seq.* And, given the suspicious circumstances surrounding the addendum, it was prudent to test the validity of the addendum in court at the evidentiary hearing that was conducted. The determination of the validity of the addendum rested in great part on the probate court assessing Douglas's credibility, and an evidentiary hearing was the proper forum to test his credibility, with appellants having the opportunity to cross-examine Douglas. The documentary evidence compiled prior to the evidentiary hearing was not sufficiently compelling, such that Wesley should have accepted the validity of the addendum and halted the ongoing challenge. Indeed, even after the evidentiary hearing was conducted, and prior to the court's ruling recognizing the validity of the addendum, the court itself granted appellants' request to further depose Douglas because of the inconsistencies in his prior deposition and evidentiary hearing testimony relative to witnessing the decedent's execution of the addendum, and because of the discovery of the two different versions of the addendum.

We are not holding that the probate court erred in determining that the 2007 addendum was valid and enforceable, which is not an issue before this panel, but we are concluding that appellants' challenge of the 2007 handwritten addendum was far from frivolous. The probate court clearly erred in finding that the challenge was frivolous.

Next, the probate court concluded that Wesley had essentially misrepresented in various early court filings, primarily Wesley's answer to Natalie's original petition, that he had confirmed that none of the grandchildren wished to purchase the decedent's house. The house was not expressly mentioned in the trust and the two formal amendments of the trust, but it was specifically addressed in the addendum, giving the decedent's grandchildren the first opportunity to purchase the house. We initially note that Wesley contended in his filings that he had confirmed with his own children that they were not interested in purchasing the house, that he confirmed through Donald that Donald's children were not interested in purchasing the house, and that he inferred that none of Douglas's children were interested in buying the house, given that Douglas had been demanding that the house be listed with a broker for sale. Accordingly, with respect to direct communications between Wesley and the grandchildren, Wesley only indicated that he actually discussed the matter with his own children. There was no evidence that Wesley had lied about receiving confirmation from Donald about the wishes of Donald's children.

Several grandchildren produced affidavits in which they averred that they were never notified about having a right to purchase the house. This might suggest that Wesley had not confirmed with his own children about whether they were interested in purchasing the house, contrary to his court filings. But those same affiants averred that Wesley's answer to Natalie's petition was true and accurate as to Wesley's contentions about the grandchildren's wishes, even though they had not been notified about a "right" to purchase the property. The grandchildren claimed that they simply changed their minds about wishing to purchase the house. Perhaps this can be viewed as a game of semantics, but what remains absolutely clear is that *none* of the grandchildren had a desire to buy the house until Natalie filed her petition to purchase the house on April 13, 2011, which was long after Wesley had answered Natalie's original petition in the fall of 2010.

Furthermore, the whole issue about a purchase of the home by the grandchildren was essentially irrelevant until the probate court rendered its decision that the addendum was valid and enforceable, considering that it was the addendum, not the original trust documents, that gave rise to any rights in the grandchildren to buy the house. The probate court did not find the addendum valid until August 8, 2011, so what the grandchildren were told or what they wished to do had no true meaning until then and had no real impact on the litigation and the costs and fees incurred by Natalie to that point. And within two weeks of the court's ruling, grandchild Stephanie Krane-Boehmer formally petitioned the court to purchase the decedent's house, soon being joined by other grandchildren.

In sum, appellants did not file any frivolous or false documents regarding the grandchildren's wishes and Wesley's communications with the grandchildren. Moreover, even assuming a misrepresentation, it had no significant bearing on the course of the litigation.²

Next, with respect to a land contract relative to the decedent's house that was executed by Wesley, on behalf of the trust, and Donald and his wife as purchasers, the probate court was troubled by two aspects of the land contract that gave rise to the award of sanctions. First, the court was angered by the decision to enter into the land contract when a dispute had emerged and was before the court regarding the validity of the addendum, which had a bearing on who could potentially purchase the decedent's house. Second, the court found that Wesley's answer to Natalie's original petition and his supporting affidavit had falsely represented that the land contract had been executed back on October 1, 2010, or at least prior to the filing of the answer and affidavit. Appellants argue that the execution of the land contract did not entail the signing of a court document; therefore, MCR 2.114 was not implicated. Appellants further contend that Wesley's answer to Natalie's petition and his supporting affidavit merely stated that the land contract became effective on October 1, 2010, which is not the same as stating that it was executed on October 1, 2010. Accordingly, there was no misrepresentation in the court filings.

² On an associated issue, we do agree that appellants' argument below that the addendum required a collective decision to purchase by all of the grandchildren lacked legal merit, but it was simply an alternative legal argument and, again, it really had little to no bearing on the litigation and the attorney fees and costs incurred.

It appears that ultimately there is no dispute that the land contract was not actually executed on October 1, 2010, although the land contract indicated that it was “entered as of October 1, 2010.”³ As used in that grammatical context, the term “entered” can be viewed as either equating to the act of executing a document or to the time at which it became effective. Regardless, proceeding on the assumption that the land contract was executed after the litigation commenced and Wesley’s answer to the petition had been filed, the decision to execute the land contract and its execution would not have implicated MCR 2.114, as there was no court filing. Assuming that MCL 600.2591 could legally serve as the basis for sanctions, the decision to execute the land contract and its execution cannot really be framed as a “defense” to an action, let alone a frivolous defense. Moreover, given that the trust documents, aside from the addendum, provided general authorization to enter into the land contract with Donald and his wife,⁴ and considering that none of the grandchildren, including Natalie, were interested in purchasing the house *at the time of the land contract* even if the addendum was valid, it was not inherently improper nor reflected the absence of good faith to sell the house to Donald and his wife after the litigation started. There was no court order precluding the action.

Further, appellants are correct in their argument that Wesley’s answer to Natalie’s petition and his supporting affidavit merely stated that the land contract was *effective* October 1, 2010; it was not claimed that the land contract was executed on October 1, 2010. The answer and affidavit, dated November 30, 2010, did indicate that the land contract *had been* entered into and executed, but this simply would mean that it could have been executed at any point prior to the filing on November 30, 2010. And there does not appear to be any definitive evidence that the land contract was executed at a later time; Natalie does not cite any evidence⁵ and the probate court itself stated that no clear answer emanated from the evidentiary hearing as to the execution date. Wesley’s deposition testimony that the land contract was executed in maybe December or November 2010 provides little assistance. There was a lack of evidence showing that Wesley’s answer to Natalie’s petition and his supporting affidavit were false in relationship to the date of the land contract’s execution.

Finally, in the process of awarding sanctions, the probate court adopted wholesale the myriad arguments or bases presented in Natalie’s lower court briefs in support of sanctions under MCR 2.114, a practice that we frown upon. We have carefully scrutinized these arguments or bases, and to the extent that they have not already been addressed above and assuming that there is any merit to them, they were *de minimis*, reflecting minor assertions in the court-filed documents that had little to no impact on the extent of the litigation. Rather, the litigation was

³ None of the persons executing or witnessing the land contract dated the document.

⁴ The trust allowed Wesley as trustee “[t]o sell, convey, pledge, mortgage, lease, manage, operate, control, transfer title, divide, convert or allot the trust property, including real and personal property, and to sell upon deferred payments[.]”

⁵ We note that, in direct derogation of MCR 7.212(D)(3)(b), Natalie’s appellee briefs contain virtually no citation to the record or transcripts in support of her factual assertions.

driven and made lengthy by the battle over the validity of the addendum; a matter that was not frivolously litigated.

In sum, while we appreciate the probate court's frustration in presiding over what the court itself called "a complete and utter mess," sanctions were not appropriate in this bitter family dispute, and we reverse the probate court's award of attorney fees and costs and remand for entry of an order denying sanctions to Natalie or any party under MCL 600.2591, MCR 2.114, and MCR 2.625.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. We decline to award taxable costs to any party under our discretion set forth in MCR 7.219.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood