

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF EMMET

**JENNIFER MCGHAN, formerly
known as JENNIFER BONDS,**

Plaintiff/Petitioner,

v

**File No: 08-1151-UN
08-1149-PP
Honorable Charles W. Johnson**

CHRISTOPHER BONDS,

Defendant/Respondent,

and

ANDREW MCGHAN,

Petitioner,

v

File No: 08-1150-PH

CHRISTOPHER BONDS,

Respondent.

OPINION

Defendant/Respondent Christopher Bonds seeks sanctions for the filing of two PPO actions and a separate action seeking registration and enforcement of a Georgia divorce judgment. The Court finds that Plaintiff/Petitioner Jennifer McGhan ("McGhan"), her husband Andrew McGhan ("Andrew McGhan") and their attorney Shelley Kester prepared and/or signed documents in violation of MCR 2.114.¹ The Court awards sanctions as specified below.

1. Proceedings in this Court.

On the afternoon of Thursday, March 20, 2008, McGhan filed PPO requests for herself and her husband. Both PPO Petitions indicate in paragraph 3(b) that there are no other orders or judgments between the parties except the Georgia divorce judgment.² Both Petitions allege a history of violent threats by Bonds.

Andrew McGhan's Petition concludes as follows:

"Please provide me with the protection of a Personal Protection order because there is good reason to believe Respondent will travel to the state of Michigan and assault or kill me, my wife and her two daughters."

McGhan's Petition likewise states:

¹ Bonds also seeks sanctions under MCL 600.2591, MCL 722. 1208 and MCL 722.1311. Because the Court finds sanctions are warranted under MCR 2.114, consideration of the above statutes is unnecessary.

² McGhan and Bonds were divorced on May 22, 2006, by the Judgment of the Superior Court of Camden County, Georgia, file number 06V0020.

"I'm afraid Respondent will kill me, my husband, Andrew McGhan, and our daughters, Samantha and Julianna Bonds out of retaliation for registering the Georgia Order in Michigan."

McGhan's Petition goes on at length to recite an alleged history of violent threats and "ongoing conflicts over the custody and care of our daughters . . ." McGhan's Petition further alleges:

"I truly fear this risk has intensified to a dangerous level as a consequence of my registering the Georgia order **in my home county and state of Petoskey, Michigan, where the children reside with me** and my husband, and likely will result in stalking and imminent bodily harm to me, and our family."

(emphasis added)

After reviewing the Petitions, the Court met with McGhan, and made a written record of her statements to the Court as follows:

"She is meeting R. (i.e. Respondent Bonds) tonight, w/her mother, in a public place, to get daughters. This will not be any problem or danger. Danger tomorrow when he will be served (in OH) with w/order from GA re: P/T (i.e. parenting time). She has custody. He has reasonable & liberal P/T. Requests order be issued tomorrow."³

As the above notes document, McGhan represented that she had custody of her daughters, and that they resided with her in Petoskey, Michigan. She stated that she was going to meet Bonds that evening to have her daughters returned to her.

The Court noted that the immediate issuance of the PPO requested by McGhan would prohibit Bonds from approaching her in a public place or entering onto property occupied by her. In response, McGhan indicated that she would not be in danger meeting with Bonds in a public place to have her daughters returned to her, but the danger would arise soon afterwards. Accordingly, the Court agreed to issue the PPOs the next morning, and did so on March 21, 2008, at 8:30 a.m.

Each PPO Petition was signed by the Petitioner, i.e. by McGhan and her husband. Attorney Kester admits that she prepared both Petitions, and her appearance was entered on behalf of each Petitioner when the Petitions were filed.

Later in the morning on Friday, March 21, 2008⁴, McGhan filed her "Verified Motion Requesting Registration of Child Custody Determination by State of Georgia, Pursuant to MCL 722.1304 (Registration Motion)" and her "Verified Petition to Enforce Georgia, Camden County Child Custody Determination Pursuant to MCL 722.1307 (Petition to Enforce)." Both the Registration Motion and the Petition to Enforce were signed by McGhan and by attorney Kester.

Both of these documents allege, accurately, that McGhan and Bonds were divorced in Georgia, and that the Georgia Judgment awarded custody to McGhan. Both Petitions further allege the following:

³ This written memorandum of McGhan's verbal representations in support of the PPO requests was made and filed in the PPO files in compliance with MCR 3.310(B)(1)(c).

⁴ Good Friday, the beginning of the Easter holiday weekend.

"The Georgia Child Custody Determination for which enforcement is sought has not been vacated, stayed or modified by the Georgia Court or Federal law."⁵

Both documents also allege:

"No proceedings have been commenced that could affect the current proceeding including proceedings related to domestic violence, protective order, termination of parental rights, or adoption."⁶

(emphasis added)

In addition, the Registration Motion states that:

"The Georgia Child Custody Determination has not been modified by a court or state having jurisdiction to do so, and said Certified Order is the last Order from the Georgia Court in the matter. Georgia has not declined to exercise jurisdiction and no other court has currently jurisdiction of the matter. . ."⁷

The Motion further alleges:

"Plaintiff is the biological mother of the children . . . her address is: 1525 Bear Creek Ln., Apt. N., Petoskey, Michigan 49770. **Plaintiff resides there** with her husband, Andrew McGhan, **and the minor children**. Plaintiff has resided in Emmet County, Michigan **since April 28, 2007**."⁸

(emphasis added)

Likewise, the Registration Motion states:

"The children are present in the state; . . . The State of Georgia has made a child custody determination regarding the minor children, awarding Plaintiff primary physical custody, and Defendant parenting time, but the parenting time afforded Defendant therein does not protect the minor children from the following mistreatment and threatened abuse by Defendant. . ."⁹

On the morning of May 21, 2008., after filing the Registration Motion and Petition to Enforce, McGhan sought, ex parte, the entry of an order taking temporary emergency jurisdiction of the children, ordering Bonds to comply with the Georgia Judgment, and modifying his parenting time under that Judgment such that he would only be permitted supervised parenting time in Traverse City, Michigan.

This Court denied the ex parte request but in so doing stated that the matter could be set for a hearing. Thereafter, by a Notice of Hearing dated March 24, 2008, attorney Kester set

⁵ Registration Motion, paragraph 4, Petition to Enforce, paragraph 3 c.

⁶ Registration Motion, paragraph 8, Petition to Enforce, paragraph 4.

⁷ Paragraph 4.

⁸ Paragraph 5.

⁹ Paragraph 13 a & b. Similar language is set forth in the Petition to Enforce, paragraph 9 a & b.

a hearing date of April 29, 2008 for the Motion to Enforce. Also on March 24, 2008, Kester sent this Court a letter by facsimile, asking this Court to disregard an Order issued that date by the court in Ohio.

2. Undisclosed Proceedings Elsewhere.

As noted above, McGahn represented to this Court that she had uncontested custody of her daughters by virtue of the Georgia divorce judgment, that they resided with her in Petoskey, and that no other court was involved. The untruths, half-truths and improper motive underlying the documents filed by her in this Court started to unravel on Monday, March 24, 2008.

On that date, the Court of Common Pleas in Ashtabula, Ohio, issued its "Order for Immediate Return of Children." This Order was entered in case number 07 DR 379. It called for the children to be immediately returned to Bonds, and suspended McGahn's visits "pending further Order."

It appears that McGahn obtained the children for weekend visitation over the Easter weekend, and sought to prevent Bonds from getting the children back by means of the improperly-obtained PPOs and the Motion to Enforce filed in this Court. The children were not returned to their father as scheduled on March 23rd. He promptly sought and obtained orders from the Ohio Court and this Court, which resulted in the children being returned to him a few days later.

By means of information supplied by the Ohio Court, and by counsel for Bonds, this Court has learned the following facts that were either omitted, misrepresented or presented in a misleading fashion in the documents filed here.

On October 17, 2006, a convenience store worker in Kalkaska, Michigan contacted the police about two young children playing in the store parking lot who almost got hit by a beer truck. The police officer who responded found Julianna Bonds, age two, and another young child playing in the rain. They were not properly clothed, had no shoes or socks on their feet, and their feet were red and swollen. Protective Services was contacted. McGahn was located and said she had been sleeping and did not know her child was out of the house. The home was found to be "filthy and extremely dirty and no place for kids at this age to be living."¹⁰

On November 2, 2006, the Family Court in Kalkaska entered an Order removing the children from McGahn, and placing them with Bonds. On the same date, in a modification action brought by Bonds in Kalkaska County, as file number 06-9297-UM, Judge Buday entered an "Ex Parte Order for Temporary Modification of Custody, Support and Parenting Time." This Order granted Bonds temporary custody of the children. The children went to live with him in Rome, Ohio, and have continued to reside with him there ever since.

The Kalkaska Order granting Bonds temporary custody remained in effect until the action was dismissed by Judge Buday on September 14, 2007. This dismissal came on the heels of a "status conference" attended by attorney Kester on behalf of McGahn, and attorney Darryl Johnson on behalf of Bonds.¹¹

This conference was held on September 12, 2007. At the conference, Judge Buday, knowing

¹⁰ Hearing transcript from November 2, 2006, Kalkaska file number 06-3865-NA, pp 4-9.

¹¹ Kester entered her appearance on behalf of McGahn in this case on September 12, 2006.

that the children had lived with Bonds in Ohio for over 10 months, and being concerned that McGhan might try to use the Georgia Judgment to have authorities seize the children, indicated that she would dismiss the case two days later, in order to provide time for Bonds to commence appropriate proceedings in Ashtabula County, Ohio.¹² The dismissal order entered by Judge Buday on September 14, 2007 expressly states:

"The Court finds that the. . .children. . .were placed with. . .Bonds by the Michigan Department of Human Services on or about November 2, 2006. . . **Bonds is currently residing in the State of Ohio with the children. The Plaintiff should proceed with a change of custody in the State of Ohio.** This Court shall dismiss this matter for lack of jurisdiction as none of the interested parties reside here. . . This will allow Plaintiff to file for a change of custody in the State of Ohio."

(emphasis added)

Bonds filed in Ohio, and on September 14, 2007, in case number 07 DR 379, the court in Ashtabula County entered its "Emergency Order for Temporary Custody/Placement" which awarded Bonds "temporary custody/placement of the minor children." Since that time, McGhan has appeared through counsel in the Ohio case. She has sought and obtained orders from the Ohio court for parenting time. She has sought and obtained an order for a "forensic custodial evaluation." The matter is proceeding toward a custody trial scheduled for June 17 and 18, 2008.¹³

3. Sanctions Motion.

Once the McGhans' PPOs and the Registration Motion and Petition to Enforce from this Court were served on Bonds, he promptly entered his appearance through attorney Jeanne Hannah. This took place on April 4, 2008. On this date, attorney Hannah filed on behalf of Bonds an objection to registration of the Georgia Judgment which asserted that Ohio has jurisdiction over the parties' minor children, and that an action was pending in Ohio.

Prior to filing these pleadings, attorney Hannah communicated with attorney Kester, including an e-mail dated March 27, 2008, requesting voluntary dismissals of the proceedings in this Court. Kester responded by e-mail "I will not be available to respond until I speak with my client and my return from my out of town travel on 4/8/08." Based upon this response, Hannah filed the pleadings referred to above and also a motion for sanctions on behalf of Bonds.

On April 22, 2008, McGhan filed her "Withdrawal of Motion Requesting Registration and to Enforce Child Custody Determination". She and her husband also submitted and obtained the entry of orders terminating the Personal Protection Orders. Bonds now seeks as sanctions the costs he incurred in having to respond to the actions filed in this Court.

4. Legal Standards.

MCR 2.114 governs how all pleadings and other documents must be signed to be able to be filed in court proceedings, and the representations that accompany the signing and filing of

¹² Johnson Affidavit dated April 16, 2008.

¹³ While the Registration Motion and the Petition to Enforce make brief reference, in a footnote, to proceedings in Ohio, this is followed immediately by the statement that the Ohio action "was dismissed for lack of jurisdiction." This is apparently a reference to McGhan dismissing a separate action she filed in Ohio, and to say the least, it is misleading, since she was actively participating in the Ohio case referenced above, which remains pending.

court papers. The specific language of the rule that is pertinent to the sanctions request in this case is as follows:

“(C) Signature.

(1) *Requirement* Every document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document . . .

(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 or 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.”

The language of the rule as quoted above means that factual statements made to a court must be entirely truthful and complete. This is reinforced as to documents signed by an attorney by the language of MRPC 3.3(a), which states:

“A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal; (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.”

In addition, the lawyer’s duty of candor is heightened in ex parte proceedings. MPRC 3.3(d) makes this explicit as follows:

“In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts that are known to the lawyer and that will enable the tribunal to make an informed decision, whether or not the facts are adverse.”

Thus, positive assertions of facts not known to be true, half-truths and material omissions are impermissible. Also, it is recognized that MCR 2.114(D) imposes an affirmative duty on an attorney to conduct a reasonable inquiry into the accuracy of factual statements made in a pleading the attorney signs. The reasonableness of the inquiry is judged by an objective standard. *Davis v Davis*, 179 Mich App 72, 89; 445 NW2d 460 (1989).

5. Sanctionable Conduct.

McGhan clearly knew of the Ohio custody case, and she knew her children resided in Ohio with their father. Her representations to this Court that she had custody, that the children resided with her here in Petoskey, and that there was no other court action pending were clearly false and/or misleading.

Attorney Kester claims that her only involvement in the Kalkaska proceedings was that she attended the status conference before Judge Buday on September 12, 2007. Kester says that thereafter she had no further involvement with McGhan until just before the filing of the pleadings here. In response to this Court’s direct inquiry, Kester states that she “does not

recall seeing" the Ohio Order entered on September 14, 2007.

Kester knew that Bonds intended to file for custody in Ohio, as discussed at the status conference on September 12, 2007. She also admits knowing that McGhan was represented by counsel in Ohio, and that some sort of proceeding was pending there, but Kester says she accepted the explanation from her client that there was nothing but a "visitation order" entered in Ohio. Before making the positive assertions which she made to this Court, a reasonable inquiry by Kester into exact nature of the proceedings in Ohio should have been conducted. Such inquiry would have resulted in her learning of the September 14, 2007 Order.¹⁴

In addition, Kester's obligation of candor to this Court was violated by the language in her pleadings indicating that the children lived with their mother in Petoskey. Kester knew or should have known that from November 2, 2006 the children had been living, at least for the vast majority of the time, with Bonds, in Ohio.

The PPOs sought and obtained by McGhan and Andrew McGhan were part of her carefully orchestrated scheme to obtain the children from Bonds, and keep them from him while she attempted to forum shop here for a custody decision more to her liking. Kester admits that McGhan was "frustrated" by the handling of her case elsewhere. Also, this Court has been made aware of McGhan's internet website which purports to tell her story, solicits donations for her cause, and which details her dissatisfaction with court actions elsewhere under headings like "False Allegations of Abuse & Neglect" and "A Corrupt System."¹⁵

When a document is filed in violation of MCR 2.114, subrule (E) directs that the court "shall impose" sanctions. Here, McGhan and Kester filed documents that were not well grounded in fact. Also, McGhan and Andrew McGhan filed the PPO Requests for the improper purpose of impeding Bonds from pursuing the return of the children, and Kester represented them in this effort but failed to sign the PPO Petitions as required by MCR 2.114(C)(1). For the above reasons, sanctions against McGhan, Andrew McGhan and attorney Kester must be imposed.

6. Amount of Sanctions.

MCR 2.114(E) provides that sanctions may include: "the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees." Bonds seeks sanctions in the amount of \$8,830.58 for attorney fees and costs billed by attorney Hannah, and \$2,947.50 for fees to his Ohio attorney, travel to Michigan to recover his children, and loss of work.

The above amounts sought by Bonds for his travel expenses includes projected gas expense

¹⁴ For purposes of this sanctions decision, this Court accepts Kester's claim that she did not know of the 9/14/07 Ohio Order. However, there is much which causes this Court to suspect that she was more deeply complicit in the effort to mislead this Court. For example, the statements made concerning McGhan's residence and the children residing with her seem to have been carefully crafted to lead this Court to incorrectly believe that Michigan is the "home state" for the children within the terms of the UCCJEA, i.e. MCL 722.1102(g). Also, Kester now presents a detailed legal argument to the effect that neither Kalkaska or Ohio properly took jurisdiction of the children. It appears that Kester may have carefully worded assertions like: "no other court has currently jurisdiction" and "the Georgia . . . Determination . . . has not been . . . modified by the Georgia Court or Federal law" to skirt candid disclosure of the Ohio proceedings she was aware of.

¹⁵ <http://bringsamandjuliannahome.webs.com/ourstory.htm> If McGhan denies that the statements on this website are her statement, properly admissible under MRE 803(d)(2), she should notify this Court immediately so that an evidentiary hearing can be scheduled.

of \$325 and turnpike tolls of \$13.00 for the hearing previously scheduled here on April 29, 2008. Since that hearing will not occur, his expenses are reduced to \$2,609.50.

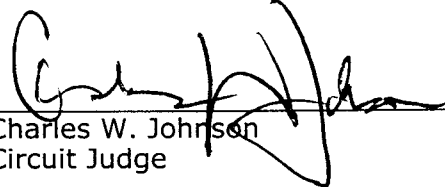
Attorney Hannah's bill includes a projected expense for 4 hours of travel to and from Petoskey, and 4 hours for attendance at the hearing previously scheduled for April 29, 2008. While this hearing will not occur, instead attorney Hannah traveled here and attended the hearing on the sanctions motion on May 6, 2008, which lasted approximately 2 hours. Thus the Hannah's bill should be reduced by 2 hours to \$8,530.58.

Kester argues that Hannah after receiving her e-mail should have waited for her return from vacation before proceeding to prepare and file responses to the actions filed in this Court. This Court finds that it was reasonable and appropriate for Hannah to promptly prepare and file responses and sanctions motions, as she did.

If there is any other factual dispute that McGhans and/or Kester wish to have this Court consider bearing on the amount of sanctions, they shall file and serve a notice of hearing and a pleading setting forth such factual dispute within 10 days.¹⁶ Otherwise, an order for sanctions against them, jointly and severally, may be submitted in the amount of \$11,140.08.

Counsel for Bonds shall submit an Order consistent with this Opinion.

May 15, 2008


Charles W. Johnson
Circuit Judge

xc: Shelley A. Kester
Jeanne M. Hannah

¹⁶ If such a hearing is requested, the amount of sanctions may increase, as the costs of the sanctions proceedings are properly included in the sanctions award. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).