STATE OF MICHIGAN

COURT OF APPEALS

DARSALYN SALMON,

Plaintiff-Appellant,

v

RANDALL SMITH,

Defendant-Appellee.

UNPUBLISHED
July 30, 2009

No. 277752
Kent Circuit Court
LC No. 99-009368-DM

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

In this child custody action, plaintiff appeals by leave granted the trial court's award of attorney fees pursuant to MCR 2.114(D) and (E). We affirm the assessment of attorney fees in part, vacate the amount of attorney fees awarded, and remand this case for a proper determination of attorney fees related to plaintiff's sanctionable filing.

Plaintiff first argues that the trial court improperly placed a condition on her statutory right to de novo review of the referee's custody recommendation by requiring her to pay attorney fees if the trial court agreed with the referee's decision. We disagree with plaintiff's characterization of the facts. The trial court complied with MCR 3.215(F)(2) by conducting de novo review of the referee's custody order. While the trial court prewarned the parties that it might assess attorney fees if it found that an objection was frivolous, the trial court had authority under MCR 3.215(F)(3) to take that action. The trial court did not place any improper condition on its review.

Next, plaintiff pieces together a number of disparate arguments, assailing the trial court's assessment of attorney fees pursuant to MCR 2.114(D) and (E). This Court reviews for clear error a trial court's determination whether to impose sanctions under MCR 2.114. *Contel Sys Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000). "The interpretation and application of court rules and statutes present a question of law that is also reviewed de novo." *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich 117, 123-124; 693 NW2d 374 (2005).

MCR 2.114(D) provides:

> 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.

"The rule provides for an award of sanctions against both a party and his counsel for not making reasonable inquiry as to whether a pleading is well-grounded in fact and warranted by either existing law or a good-faith argument for extension, modification or reversal of existing law." *Briarwood v Faber's Fabrics, Inc*, 163 Mich App 784, 792; 415 NW2d 310 (1987). "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)." *Guerrero v Smith*, 280 Mich App 647, 678; 761 NW2d 723 (2008). MCR 2.114 does not provide for a procedure for the courts to follow before sanctions may be imposed. *Hicks v Ottewell*, 174 Mich App 750, 757; 436 NW2d 453 (1989). But, it "does not mandate that, before a court may impose sanctions, it must determine whether a party or a party's attorney had an improper purpose in filing the pleadings." *Lloyd v Avadenka*, 158 Mich App 623, 629; 405 NW2d 141 (1987).

In the instant case, the trial court assessed attorney fees against plaintiff and her counsel, providing the following rationale:

> Attorney Fees are justified under MCR 2.114(D) and MCR 2.114(E). With respect to same this Court does find the following:
>
> > a. The Friend of the Court, when making its initial assessment and recommendation regarding custody and parenting time in this matter was working with misinformation;
> >
> > b. Several of the de novo review hearings and hearings related to objections brought during the pendency of this matter were indeed frivolous; and
> >
> > c. The de novo review hearing held on January 29, 2007 was completely unnecessary and Plaintiff's objection filed to the Referee Recommendation Regarding Change of Custody was, as claimed by Defendant, frivolous and without merit.

MCR 2.114 "applies to *all* pleadings, motions, affidavits, and other papers provided for by these rules" (emphasis added). With respect to the first two bases for assessing attorney fees, the trial court did not refer to any signed documents. Rather, the trial court only indicated that

sanctions were warranted, in part, for misinformation provided to the friend of the court, and for having several de novo review hearings. We note that the record reflects that plaintiff filed two motions for de novo review hearings following recommended orders by the referee, and the latter of those formed the third ground on which the trial court based its award. On the record, the award of attorney fees under MCR 2.114(D) and (E) based on the first two grounds was contrary to the court rules and was clearly erroneous.

However, the trial court properly found that attorney fees were warranted under MCR 2.114(D) and (E) based on plaintiff's September 27, 2006 objection to the referee's custody recommendation. This objection resulted in the January 2007 hearing. We have thoroughly reviewed the record, paying particular attention to the September 27, 2006 objection. Because MCR 2.114 "applies to *all* pleadings, motions, affidavits, and other papers provided for by these rules," the trial court could assess sanctions under that court rule, even though it could also have assessed attorney fees for a frivolous objection pursuant to MCR 3.215(F)(3), but chose not to do so.

Initially, we note that plaintiff's objection does not comply with MCR 3.215(E)(4), which governs objections. Plaintiff did not state with specificity the inaccuracy or omission regarding the referee's conclusion. In her objection, she objected to the referee's conclusion that defendant presented clear and convincing evidence that a change of custody was in the best interests of the minor child, and she also objected to 24 "findings of facts and conclusions of law." Plaintiff's objections amount only to general dissatisfaction with the referee's findings and conclusions without providing, at a minimum, any facts or arguments to refute those findings or conclusions. We find on the record that plaintiff's numerous objections were not well grounded in fact and not supported by existing law; thus, plaintiff's objection violated MCR 2.114(D)(2). *Siecinski v First State Bank of East Detroit*, 209 Mich App 459, 466; 531 NW2d 768 (1995). Sanctions under MCR 2.114(E) are mandatory for violations of MCR 2.114(D). *Guerrero, supra* at 678. Moreover, attorney fees are properly assessed for a party's frivolous objection to a referee's recommended order pursuant to MCR 3.215(F)(3).

In sum, we affirm the trial court's assessment of attorney fees in part, because we are not left with a definite and firm conviction that a mistake was made regarding the assessment of attorney fees for plaintiff's September 27, 2006 objection to the referee's custody recommendation. *Massey, supra* at 379. However, we reject and vacate the actual amount of attorney fees awarded by the trial court. This Court reviews a trial court's determination of the amount of sanctions imposed under MCR 2.114 for an abuse of discretion. *Maryland Cas Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

MCR 2.114(E) provides that the appropriate sanction "may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees." This Court has held that an award of attorney fees as part of a sanction under MCR 2.114 must be "reasonable." *BJ's & Sons Constr Co v Van Sickle*, 266 Mich App 400, 410; 700 NW2d 432 (2005). The following factors may be considered in determining a reasonable attorney fee:

> "(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." [*Id.*, quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973).]

A trial court is not limited to only those factors, and it is not required to set forth detailed findings on each specific factor. *Michigan Tax Mgt Services Co v City of Warren*, 437 Mich 506, 510; 473 NW2d 263 (1991). "If the trial court has sufficient evidence to determine the amount of attorney fees and costs, an evidentiary hearing is not required." *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 171; 712 NW2d 731 (2005).

In this case, defendant requested attorney fees, costs, and/or sanctions in the amount of $25,000, and the trial court awarded attorney fees in the amount of $15,000. Defendant complained in general that he was forced to locate witnesses, subpoena documents, and attend numerous hearings, which resulted from plaintiff's alleged deception. He asserted that he was forced to file motions for orders to show cause and motions for parenting time relief in order to obtain plaintiff's compliance with court orders. However, the filings identified by defendant as having been necessitated by plaintiff's actions amount only to $9,231.10, well below the amount requested and awarded.

Moreover, as discussed *supra*, the only sanctionable document filing identified on this record was plaintiff's September 27, 2006 objection to the referee's custody recommendation. "When requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services." *Reed v Reed*, 265 Mich App 131, 166; 693 NW2d 825 (2005). In this case, there was no clear basis for the trial court's award of attorney fees, where there was no connection between the sanctionable filings and the amount awarded by the trial court. MCR 2.114(E). The trial court appears to have picked the $15,000 figure out of thin air. Generally, the party requesting attorney fees has the burden of proving they were incurred, and that they were reasonable. *Reed, supra* at 165-166. The record demonstrates that defendant's attorney fees amounted to $1,645 related to plaintiff's September 27, 2006 objection to the referee's custody recommendation, based on the 57-page document that purportedly detailed defendant's attorney fees and costs in this matter from April 27, 2004, through November 27, 2006. We reject defendant's assertion on appeal that the trial court properly determined that $15,000 in attorney fees was appropriate based solely on the trial court's knowledge of the case and the materials provided to it. Defendant failed to meet his burden of proving that the attorney fees awarded were incurred and that they were reasonable as related to the document at issue. The trial court abused its discretion by determining the actual amount of attorney fees, which fell outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). On remand, the trial court may award only a reasonable amount of attorney fees that is actually related to plaintiff's sanctionable filing.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra