

STATE OF MICHIGAN
COURT OF APPEALS

SABLE DEVELOPMENT COMPANY,

Plaintiff/Counter Defendant-
Appellee/Cross Appellant,

v

FRANK KNEE and CHERYL KNEE,

Defendants/Counter Plaintiffs-
Appellants/Cross Appellees.

UNPUBLISHED

January 31, 1997

No. 185107

Macomb Circuit Court

LC No. 92-003614

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

PER CURIAM.

Defendants appeal as of right an order of the Macomb Circuit Court denying their motion for costs and attorney fees. Plaintiff also cross appeals from that order. We affirm.

Plaintiff filed suit against defendants alleging various causes of action arising from the destruction of a sprinkler system on its condominium development. Defendants filed a counterclaim for trespass, alleging that the sprinkler system extended onto their property. The parties were able to resolve the matter without a trial, after it was agreed that part of the sprinkler system was wrongfully placed on defendants' property. Both parties moved for costs and attorney fees pursuant to MCR 2.625; MCR 2.114, and MCL 600.2591; MSA 27A.2591, which the trial court denied.

A trial court's finding that a claim is frivolous will not be reversed on appeal unless that finding is clearly erroneous. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266; 548 NW2d 698 (1996). Whether sanctions should be imposed for a violation of MCR 2.114 is also reviewed for clear error. *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990). Clear error requires that the reviewing court be left with a definite and firm conviction that a mistake has been made. *Miller v Riverwood Recreation Center, Inc*, 215 Mich App 561, 572; 546 NW2d 684 (1996).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Based upon our review, we find no clear error in the decision of the trial court to deny both parties' claims for costs and attorney fees.

Defendants' request for sanctions pursuant to MCR 2.114 (D) is not supported by any record evidence that would support the conclusion that plaintiff's counsel failed to conduct a reasonable inquiry into the factual and legal viability of the pleadings before they were signed. Also, costs and fees under MCR 2.625(A)(2) and MCL 600.2591; MSA 27A.2591 were properly denied because plaintiff's complaint was not completely devoid of legal merit even after it was established that the sprinkler system extended a few inches onto defendants' property. See *Raniak v Krukowski*, 226 Mich 695; 198 NW 190 (1924); 75 Am Jur 2d, Trespass, § 107, p 83. Further, the litigation had the legitimate purpose of attempting to end the destruction of plaintiff's sprinkler system.

Similarly, plaintiff's request for costs and fees under the above statute and court rules is without merit because there was no conclusive evidence produced to show that defendants were responsible for severing the sprinkler lines. Moreover, defendants were able to show that the sprinklers were located on their property. Defendants, therefore, did not put forth a frivolous defense in this matter because the rights and liabilities of each of the parties were not clear.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Marilyn Kelly
/s/ Joseph B. Sullivan