

STATE OF MICHIGAN
COURT OF APPEALS

TECORP ENTERTAINMENT CORPORATION,
MIPROCOM LIMITED PARTNERSHIP, MRL
RESIDENTIAL LEASING, INC., MITAN
DOUBLEWOOD ANCILLARY CONTROL
SECTION, INC., and MITAN & ASSOCIATES,
P.C.,

UNPUBLISHED
January 30, 2001

Plaintiffs-Appellants,

v

MICHAEL S. McELWEE and VARNUM,
RIDDERING, SCHMIDT & HOWLETT, LLP,

No. 219296
Wayne Circuit Court
LC No. 98-812166-CZ

Defendants-Appellees.

Before: Saad, P.J., and Griffin and R. B. Burns*, JJ.

PER CURIAM.

Plaintiffs appeal of right the dismissal of their case and the award of sanctions against them and their attorney, Keith Mitan. The case arose out of a claim of tortious interference with plaintiffs' contract with a bonding company in a previous lawsuit between plaintiffs and defendants' clients. We affirm.

When defendants challenged subject-matter jurisdiction in the circuit court for failure to meet the statutory damages threshold, plaintiffs amended their complaint by requesting an injunction against defendants to prevent them from contacting the bonding company. The trial court dismissed the injunctive claim with prejudice, over plaintiffs' objection, and transferred the case to district court where there would be appropriate subject-matter jurisdiction, subject to plaintiffs paying defendants' attorney fees of \$7,500 for attending in the wrong court. Plaintiffs did not pay the fees or the district court filing fee, and the case was dismissed. The trial court then awarded sanctions against plaintiffs in the amount of \$7,500.

Plaintiffs first claim that the trial court improperly dismissed their claim for injunctive relief with prejudice. We review a trial court's decision to grant voluntary dismissal for an abuse

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

of discretion. *Padgitt v Lapeer Co General Hosp*, 166 Mich App 574, 578; 421 NW2d 245 (1988). In equity cases, the trial court's determinations are presumed to be correct, and this Court will not reverse absent an abuse of discretion. *Wilkins v Wilkins*, 149 Mich App 779, 792; 386 NW2d 677 (1986). We find that the trial court did not abuse its discretion in dismissing plaintiffs' injunctive claim with prejudice.

The trial court found that the injunctive claim was baseless and designed only to save subject-matter jurisdiction in the circuit court. The trial court has inherent powers to dismiss claims for litigant misconduct, such as an improper use of the courts. *Cummings v Wayne Co*, 210 Mich App 249, 252; 533 NW2d 13 (1995). Consequently, the claim was properly dismissed with prejudice although plaintiff moved to dismiss without prejudice.

Next, we conclude that the trial court did not err in conditioning the transfer to district court on payment of attorney fees. MCR 2.227(2) mandates that a transfer of a case for lack of subject-matter jurisdiction be conditioned on payment of the defendants' attorney fees for attending in the wrong court. The trial court does not have discretion in awarding attorney fees. Thus, we find no error.

Further, we find reasonable the amount of attorney fees awarded. A trial court's determination of the reasonableness of attorney fees is discretionary and will be affirmed on appeal absent an abuse of discretion. *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97; 537 NW2d 471 (1995). The trial court conducted an evidentiary hearing and found that the amount was reasonable because of the experience of the attorney, the results obtained for the client, and the amount of time and expertise required. The trial court consulted defendants' attorneys' billing records, and it found the hours expended and rate charged were reasonable for cases of this type. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). We find no error.

Plaintiffs argue that the trial court erred in converting the award of attorney fees into sanctions. We disagree. The attorney fees were a condition of the transfer of the case to district court. The subsequent sanctions were awarded because plaintiffs' attorney filed improper court documents. MCR 2.114(E) gives the trial court discretion to sanction litigants for reasonable attorney fees. Although the award in each circumstance was identical, this is understandable in light of the minimal attorney fees likely incurred between the time of the removal order and the time of the dismissal order. The trial court did not abuse its discretion.

Next, we hold that the trial court did not err in dismissing the case after awarding sanctions. MCR 2.227 states that a case transferred for lack of subject-matter jurisdiction must be dismissed if the plaintiffs do not pay the appropriate filing fee and the reasonable attorney fees of the defendants for attending in the wrong court. Plaintiffs did not pay the filing fee or the attorney fees. Sanctions were awarded pursuant to MCR 2.114(E), rather than MCR 2.227, and therefore had no bearing on the dismissal of the case.

Finally, we agree with the trial court that the initial claim was vexatious. In addition, we find that this resulting appeal is equally vexatious. This Court, on its own initiative, orders sanctions against plaintiffs and its attorneys for pursuing a vexatious appeal. MCR 7.216(C)(1); *DeWald v Isola (After Remand)*, 188 Mich App 697, 700; 470 NW2d 505 (1991). A proceeding

is vexatious when a pleading, motion, argument, or brief is grossly lacking in the requirements of propriety, violates court rules, or grossly disregards the fair presentation of the issues to the court. MCR 7.216(C)(1)(b). Plaintiffs filed a nonconforming brief, with little or no legal support to appeal a vexatious lawsuit. *Resteiner v Sturm, Ruger & Co, Inc*, 223 Mich App 374; 566 NW2d 53 (1997). Plaintiffs made misstatements to this Court in order to cast a more favorable light on their case. They did not cite to the record. The appeal was another attempt by plaintiffs to cost defendants more time and resources, as was their meritless underlying claim before the trial court. MCR 7.216(C)(1)(a).

Pursuant to MCR 7.216(C)(1), we assess and order sanctions against plaintiffs and their attorneys in favor of defendants in the sum of \$2,500 for defending against plaintiffs' vexatious appeal. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 268-269; 548 NW2d 698 (1996); *Wilson v Knight-Ridder Newspapers, Inc*, 190 Mich App 277, 280; 475 NW2d 388 (1991).

Affirmed with sanctions on appeal awarded.

/s/ Henry William Saad
/s/ Richard Allen Griffin
/s/ Thomas B. Burns