STATE OF MICHIGAN

COURT OF APPEALS

ROSEMARIE ZOBEL, Trustee of the VICTOR AND LILLIAN MILLER FAMILY LOVING TRUST, and HAROLD J. HOUK, Co-Personal Representative of the Estate of VICTOR E. MILLER, Deceased, and Co-Trustee of the VICTOR E. MILLER REVOCABLE TRUST,

Plaintiffs-Appellants,

v

FREDERICK J. PROST,

Defendant-Appellee.

UNPUBLISHED
September 24, 2002

No. 229978
Oakland Circuit Court
LC No. 96-511596-NZ

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Plaintiffs appeal by delayed leave granted the circuit court order awarding defendant sanctions for defending against a frivolous action. We affirm.

If the court finds that a civil action or a defense thereto was frivolous, it must award the prevailing party "the costs 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). The costs recoverable include reasonable attorney fees. MCL 600.2591(2). An action is frivolous if "[t]he party's legal position was devoid of arguable legal merit." MCL 600.2591(3)(a)(iii). "A trial court's finding with regard to whether a claim or defense was frivolous will not be disturbed on appeal unless the finding is clearly erroneous." *State Farm Fire & Cas Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1991). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Every document filed by a party must be signed by the party or the party's attorney. MCR 2.114(C)(1). That signature constitutes a certification that, among other things, "to the best of [the signer's] 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." MCR 2.114(D)(2). A document signed in violation of subrule (D) subjects the signer, a represented party, or both to sanctions, including

reasonable attorney fees. MCR 2.114(E). This Court reviews a trial court's decision regarding the imposition of sanctions under MCR 2.114(E) for clear error, *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997), but reviews the amount of the sanctions imposed for an abuse of discretion. *Maryland Cas Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

The trial court found that the action was frivolous because plaintiff Houk lacked standing to sue. There is no dispute that Houk proceeded in this lawsuit without the consent of his co-trustee.[1] While there was arguably some legal merit to Houk's position that he alone could sue defendant for a breach of trust, see 2 Restatement Trusts, 2d, § 200, comment e, pp 440-441 (a trustee has standing to bring suit individually against a fellow trustee to redress a breach of trust), that alone did not preclude a finding that his claim was frivolous. While Houk did claim that defendant breached a duty owed to the 1993 trust by making it incur unnecessary expenses, he did not sue defendant in his capacity as a trustee for breach of a duty owed to the trust or the beneficiaries. Rather, he sued defendant in his capacity as a lawyer for breach of a duty owed to his client. Houk also joined plaintiff Zobel, in alleging claims that defendant's actions with respect to the 1993 trust resulted in a detriment to the 1990 trust, a trust to which defendant owed no duty and in which Houk had no interest. Therefore, there was no arguable legal merit to Houk's claim that he could sue defendant for malpractice affecting the trusts and thus the trial court did not clearly err in finding that a civil action initiated by Houk was frivolous.

We find no abuse of discretion in the court's determination of an appropriate sanction. Defendant presented a detailed statement of services. The court, which was familiar with the facts of the case, reviewed the statement and, taking into account the factors enumerated in *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), and plaintiffs' objections, made an independent determination as to what constituted a reasonable fee. The court was not required to make specific findings as to each of the relevant factors, *id.*, and was not required to hold an evidentiary hearing. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999); *Giannetti Bros Constr Co v Pontiac*, 175 Mich App 442, 449-450; 438 NW2d 313 (1989).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Hilda R. Gage

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[1] Michigan law provides that multiple co-trustees are a collective party and must act as one when exercising their powers in matters pertaining to the estate or trust. See, e.g., *Nichols v Pospiech*, 289 Mich 324, 334-335; 286 NW 633 (1939) (the Michigan Supreme Court held invalid a contract to purchase real estate where a trustee entered into the agreement without the consent of his co-trustee).