STATE OF MICHIGAN

COURT OF APPEALS

DEENA HAYES,

Plaintiff-Appellant,

and

CHRISTOPHER E. PENCAK,

Appellant,

v

RITE AID OF MICHIGAN, INC.,

Defendant-Appellee.

UNPUBLISHED
June 15, 2004

No. 248015
Ingham Circuit Court
LC No. 03-000148-NZ

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting defendant sanctions in the amount of $8,025 to be paid by plaintiff and plaintiff's counsel pursuant to MCR 2.114. We affirm.

Plaintiff filed suit against defendant, her employer, based on the Michigan Minimum Wage Law (MMWL), MCL 408.381 *et seq*., for failure to pay her overtime compensation. However, defendant was exempt from the MMWL pursuant to MCL 408.394 because it was subject to the Fair Labor Standards Act (FLSA), 29 USC 201 *et seq*. After plaintiff refused to voluntarily dismiss the case with prejudice, defendant filed a motion for summary disposition and a motion for sanctions. Based on a review of the facts and the state and federal statutes, the trial court found that defendant clearly was subject to the FLSA and exempt from the MMWL. The court granted defendant's motion for sanctions pursuant to MCR 2.114.

Plaintiff first argues that the award of sanctions was improper because her claim was not frivolous and could have been corrected with an amendment to the complaint. We review a trial court's decision to impose sanctions under MCR 2.114 for clear error. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). "A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed." *Id.* We find no clear error.

If a party is represented by an attorney, the attorney has an affirmative duty under MCR 2.114 to conduct a reasonable inquiry into the factual and legal viability of a claim before signing the complaint. *Cvengros v Farm Bureau Ins,* 216 Mich App 261, 266; 548 NW2d 698 (1996). The reasonableness of the inquiry is assessed by an objective standard, and an attorney's subjective good faith is irrelevant. *Attorney General v Harkins,* 257 Mich App 564, 576; 669 NW2d 296 (2003). An attorney's or party's signature on a court document constitutes a certification that, after reasonable inquiry, the statements in the document are "warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law[.]" MCR 2.114(D)(2).

Application of the FLSA and the MMWL is well-settled. The FLSA applies to all enterprises with two or more employees engaged in interstate commerce with a gross income over $500,000. 29 USC 203(b), (i), (j), and (s), and the MMWL specifically provides that employers subject to the FLSA are exempt from the MMWL, MCL 408.394 and MCL 408.384a. Moreover, in *Hazel v Michigan State Employees Ass'n,* 826 F Supp 1096 (WD Mich, 1993), the Court held that the MMWL was not applicable to employers covered by the FLSA.

In this case, plaintiff's claim was clearly subject to the FLSA and plaintiff failed to make any argument that MMWL should be extended to cover the circumstances in this case. Thus, the filing of the complaint violated MCR 2.114(D) and there was no clear error in awarding sanctions under MCR 2.114(E). Further, we find unavailing the argument that plaintiff's error in citing the MMWL instead of the FLSA could have been corrected by amending the complaint because the focus of the inquiry is whether the complaint was warranted at the time the lawsuit was filed. MCR 2.114(D); cf. *Louya v William Beaumont Hospital*, 190 Mich App 151, 162; 475 NW2d 434 (1991).

Plaintiff also argues that the imposition of sanctions was premature because there was no prevailing party at the time the sanctions were assessed. However, this claim, too, is meritless because unlike MCL 600.2591, MCR 2.114 does not require that a prevailing party be determined. A prevailing party must be determined before sanctions are imposed for a frivolous claim under MCL 600.2591 and MCR 2.114(F). However, there is no such requirement when sanctions are imposed under MCR 2.114(E). Moreover, to be timely under MCR 2.114(E), a party's motion for sanctions should be brought before the action is dismissed. *Antonow v Marshall,* 171 Mich App 716, 719; 430 NW2d 768 (1988).

Finally, plaintiff argues that the court's award of $8,025 in attorney fees and costs was excessive because defendant was awarded fees for work not attributable to this case and the fees were unsubstantiated. We find no abuse of discretion. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997). MCR 2.114(E) provides that the court must impose "an appropriate sanction, which may include . . . the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees." As we discussed in *FMB-First Michigan Bank v Bailey,* 232 Mich App 711, 726-727; 591 NW2d 676 (1998), "MCR 2.114(E) does not restrict the sanctions to expenses or cost incurred. Rather, it gives the trial court discretion to fashion another appropriate sanction." Thus, the scope of the sanction is within the trial court's discretion.

The record established that defendant's counsel had appeared at two motion hearings, had prepared at least three motions and three briefs, and had prepared various other communications

and documents directly related to this case. Moreover, the trial court reduced the fees and costs that defendant had requested more than fifty percent. Based on the work performed by defendant's counsel, we find no abuse of discretion in the trial court's determination that $8,025 was a reasonable sanction.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

I concur in result only.

/s/ Pat M. Donofrio