

STATE OF MICHIGAN  
COURT OF APPEALS

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GARY KUCHARSKI,

Petitioner-Appellee,

v

NANCY KAMINSKI,

Respondent-Appellant.

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UNPUBLISHED

September 14, 2004

No. 246998

Wayne Circuit Court

LC No. 02-234358-PH

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order denying her motion for sanctions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner and respondent are neighbors in Grosse Pointe Park. Petitioner sought a personal protection order (PPO) against respondent. He alleged in the petition that for seven years, respondent “has been yelling at me and my family, calling the police in GPP and filing code violations with the city of GPP.” Eventually the trial court dismissed the petition. Respondent then sought sanctions under MCL 600.2591, asserting that the petition was frivolous. The trial court denied the motion.

Once the court finds that an action or defense was frivolous, the imposition of sanctions is mandatory. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 268; 548 NW2d 698 (1996). The trial court’s finding that an action or defense was frivolous is reviewed for clear error, but the amount of sanctions awarded is reviewed for an abuse of discretion. *In re Attorney Fees & Costs*, 233 Mich App 694, 701, 704; 593 NW2d 589 (1999). “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).

A party pleading a frivolous claim is subject to costs as provided by MCR 2.625(A)(2). MCR 2.114(F). If the court finds, on motion of a party, that an action was frivolous, costs shall be awarded as provided by MCL 600.2591. MCR 2.625(A)(2). That statute provides that if the court finds a civil action to be frivolous, it shall award the prevailing party the costs and fees incurred in the action, including all reasonable costs actually incurred by the prevailing party and costs allowed by law or court rule, including court costs and reasonably attorney fees. MCL

600.2591(1), (2). An action is frivolous if (1) the plaintiff's primary purpose in filing suit was to harass, embarrass or injure the defendant, (2) the plaintiff had no reasonable basis to believe that the facts underlying her legal position were in fact true, or (3) the plaintiff's legal position was devoid of arguable legal merit. MCL 600.2591(3)(a).

The purpose of § 2591 is “to sanction attorneys and litigants who file lawsuits or defenses without reasonable inquiry into the factual [or legal] basis of a claim or defense, not to discipline those whose cases are complex or face an ‘uphill fight.’ ” *Louya v William Beaumont Hosp*, 190 Mich App 151, 163-164; 475 NW2d 434 (1991). “If a party is represented by an attorney, the attorney has an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed.” *Cvengros, supra* at 266. Therefore, “[t]he circumstances existing at the time a case is commenced is of critical importance in determining if a lawsuit has a basis in fact or law.” *Meagher v Wayne State Univ*, 222 Mich App 700, 727; 565 NW2d 401 (1997).

Petitioner filed the petition himself; it was not signed by an attorney. He later obtained representation. Although the circuit court concluded that the PPO statute was not intended to provide protection in neighborhood disputes such as this one, it did not state that the petition or other documents were frivolous, and we cannot conclude that such a conclusion was compelled. We find no clear error. *In re Attorney Fees and Costs, supra*.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Helene N. White  
/s/ Michael J. Talbot