

STATE OF MICHIGAN
COURT OF APPEALS

TAMAR ALDRICH and MICHAEL ALDRICH,

Plaintiffs/Counterdefendants-
Appellants,

v

MICHAEL D.L. JORDAN and MISTIE K.
JORDAN,

Defendants/Counterplaintiffs-
Appellees.

UNPUBLISHED

November 18, 2004

No. 249253

Shiawassee Circuit Court

LC No. 01-007475-CH

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order awarding defendants \$5,000 in attorney fees. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs and defendants live in adjacent buildings. The rear of plaintiffs' building extends beyond the rear of defendants' building. The upper floor of that extension features a boarded-up doorway with no present means of entry. In 2001, defendants constructed a deck that extends over the land at the rear of their building, blocking access to the boarded-up door on plaintiffs' second story. Plaintiffs protested that this deck was in violation of a stairway easement in connection with the boarded-up door, citing indications in plaintiffs' deed. Defendants responded that no such easement existed in their chain of title. Plaintiffs brought suit, and defendants counterclaimed to quiet title. In the course of discovery, defendants called on plaintiffs to admit or deny that the asserted easement did not exist in defendants' chain of title, and that the doorway in issue had not been used since before 1955, but plaintiffs replied in both instances that they lacked a basis to admit or deny.

A week before trial, the parties stipulated to dismiss the case with prejudice. An order of dismissal, whose title referred to a stipulation to dismiss with prejudice and without costs, was filed on December 23, 2002. An amended order was filed January 10, 2003, differing only in that it made no mention of costs. Defendants filed their motion for costs on March 21, 2003. The trial court concluded that halfway through the discovery process it should have been clear that there was no basis for asserting the existence of an easement, and that it was merely evasive to refuse to admit or deny the interrogatories concerning defendants' chain of title or any use of

the doorway. The court acknowledged that defendants requested \$10,000 in attorney fees, but awarded only \$5,000. This appeal followed.

This Court reviews an award of costs and fees for an abuse of discretion. *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412, 422; 668 NW2d 199 (2003)

I. Timeliness of the Request

Plaintiffs argue that defendants failed to file their motion for costs in a timely fashion. By our count, the two events were separated by a period of seventy days. Defendants requested costs and fees under MCR 2.313(C), which authorizes awarding expenses resulting from an improper failure to admit, and MCR 2.114(F), which authorizes sanctions in response to a frivolous claim. The latter in turn refers to MCR 2.625(A)(2), which authorizes a court to award costs “as provided by MCL 600.2591.” The statute authorizes awards of reasonable costs and attorney fees to the prevailing party in a frivolous civil action.

For motions under that statute, “the appropriate standard for determining whether the motion for costs is timely is whether the motion was filed within a reasonable time after the prevailing party was determined.” *In re Attorney Fees & Costs*, 233 Mich App 694, 699; 593 NW2d 589 (1999). In the case just cited, seventy days was not considered too long a delay between obtaining favorable judgment and seeking costs and fees. *Id.* at 699-700. Similarly, we find that in this case the trial court properly considered defendants’ motion that was filed seventy days after the underlying amended order of dismissal.

II. Prevailing Parties

Plaintiffs argue that defendants are not prevailing parties because the underlying cause of action was settled by stipulation. According to MCL 600.2591(3)(b), a “prevailing party” is “a party who wins on the entire record.” Plaintiffs cite cases dating from the 1980s, where this Court had before it GCR 1963, 111.6, the predecessor to MCR 2.114. In one of them, this Court concluded that “GCR 111.6 does not countenance an award of attorney fees where a case has been dismissed prior to trial.” *Reppuhn v Abell*, 97 Mich App 407, 409; 296 NW2d 44 (1980). However, GCR 1963, 111.6 is worded specifically to restrict the inquiry to appearances at trial, as opposed to before trial.¹ In contrast, neither MCR 2.114, nor the rule it incorporates by reference, MCR 2.625(A)(2), include any language suggesting that the matter must have come to trial for an award to be proper.

¹ GCR 1963, 111.6 stated:

If it appears *at the trial* that any fact alleged or denied by a pleading ought not to have been so alleged or denied and such fact if alleged is not proved or if denied is proved or admitted, the court may, if the allegation or denial is unreasonable, require the party making such allegation or denial to pay to the adverse party the reasonable expenses incurred in proving or preparing to prove or disprove such fact as the case may be, including reasonable attorney fees. [Emphasis added.]

Interpreting MCR 2.625, this Court declared that to prevail on the entire record a party must have improved his or her position through the litigation. *Stamp v Hagerman*, 181 Mich App 332, 337; 448 NW2d 849 (1989), citing MCR 2.625(A)(1). In this case, defendants improved their position and prevailed in full by having the case dismissed with prejudice because they quieted title to their property concerning the alleged easement, fully refuting plaintiffs' position. Thus, defendants are prevailing parties for purposes of their motion for costs and fees.

III. The Substantive Decision

Plaintiffs argue that because their deed indicated the existence of a stairway easement, they had a reasonable basis for filing their complaint, and point out that when they later concluded that their position could not ultimately be supported, they agreed to dismiss the case. The trial court stated that it did not believe that this action was brought in bad faith, but concluded that its commencement was nevertheless frivolous because had plaintiffs conducted some research before filing suit they would have discovered that there was no basis for the lawsuit. A trial court's finding that a claim or defense was frivolous will not be reversed on appeal unless clearly erroneous. *Attorney General v Harkins*, 257 Mich App 564, 575; 669 NW2d 296 (2003).

"To determine whether sanctions are appropriate under MCL 600.2591, it is necessary to evaluate plaintiffs' claim at the time the lawsuit was filed." *In re Attorney Fees*, *supra* at 702.

The frivolous claims provisions impose an affirmative duty on each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. The reasonableness of the inquiry is determined by an objective standard. The focus is upon the efforts taken to investigate a claim before filing suit, and a determination of reasonable inquiry depends on the particular facts and circumstances of the case. The attorney's subjective good faith is irrelevant. [*Harkins*, *supra* at 576 (citations omitted).]

Plaintiffs suggest that because they had a reasonable basis for asserting the existence of an easement when they commenced their action no costs or fees should have been awarded. However, the trial court concluded to the contrary and we find that decision not to be clearly erroneous. Plaintiffs' claim depended not only on the information included within their own chain of title, but also on information included within defendants' recorded chain of title. As the trial court stated, had plaintiffs' researched defendants' chain of title, a public record, before filing suit it would have discovered that "there's really no logical interpretation by which plaintiffs would think that they had any rights regarding this lawsuit." The trial court did not clearly err in finding that the failure to undertake such an investigation did not constitute a reasonable inquiry. Accordingly, we find that the trial court did not abuse its discretion in awarding defendants attorney fees.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski