

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHAEL KELLY,

Plaintiff-Appellant,

v

CORNELL MITCHELL,

Defendant-Appellee,

and

BILLIE MITCHELL and MICHIGAN  
DEPARTMENT OF TREASURY,

Defendants.

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UNPUBLISHED

June 23, 2005

No. 250362

Wayne Circuit Court

LC No. 01-135977-CH

AFTER REMAND

Before: Talbot, P.J., and Whitbeck, C.J., and Jansen, J.

PER CURIAM.

**I. Overview**

This case is before us after we remanded it to the trial court for factual findings to support the trial court's sanction award. Because the trial court was unable to make the requisite factual findings to support the sanction award, we reverse.

**II. Basic Facts And Procedural History**

To recap, in October 2001, Michael Kelly filed this action to quiet title in a piece of property that he claimed to have purchased at a tax sale in 1999. Kelly asserted that he gave the previous owners, Billie and Cornell Mitchell, notice of the purchase in November 2000. However, the tax deed attached to the complaint showed that the property had actually been purchased by a man named Donald Dauphin. Kelly explained that he and Dauphin were business partners, and that Dauphin conveyed the property to Kelly in October 2001.

The Mitchells moved for summary disposition, alleging that Cornell Mitchell had not been properly served with notice and that Kelly had no interest in the property. Wayne Circuit Judge Kaye Tertzag granted the Mitchells' motion for summary disposition on the ground that Kelly improperly served notice of the purchase when Kelly was not the holder of the tax deed. Judge Tertzag also awarded the Mitchells sanctions; however, he made no factual findings to

support the sanction award, stating only that Cornell Mitchell “shouldn’t have been brought in,” had incurred expenses for “nothing,” and “should be reimbursed.” We remanded for factual findings to support the sanction award.

By the time this case was remanded, however, Judge Tertzag had retired, which left his successor, Judge Michael Callahan, with the difficult task of explaining Judge Tertzag’s reasoning. After hearing the parties’ explanations of the issue, Judge Callahan stated:

I think I understand now what happened. I think that the sanctions were proper and they were properly ordered under MCR 2.114(E). Now I can’t read the judge’s mind and I can’t substitute my judgment for his in the awarding for sanctions except to say he awarded the sanctions because the complaint was signed in violation of this rule [MCR 2.114(D)] without the Plaintiff having a reasonable inquiry or that the document he signed was well grounded in fact, which we now know because of the grant of summary disposition, it wasn’t well grounded in fact. It was clearly erroneous.

Judge Callahan concluded:

Well my sole purpose here is to determine whether my predecessor imposed sanctions under MCR 2.114(E) and I find that Judge Tertzag did impose sanctions and for finding whether MCR 2.114(D) was violated, I find that my predecessor did find it was violated and I think that that completes the mandate from the Court of Appeals to me.

### III. Imposition Of Sanctions

#### A. Standard Of Review

We review a trial court’s decision regarding the imposition of sanctions under MCR 2.114(E) for clear error.<sup>1</sup> We will not disturb a trial court’s finding with regard to whether a claim or defense was frivolous unless that finding is clearly erroneous.<sup>2</sup>

#### B. Requirement Of Factual Finding

Cornell Mitchell moved for sanctions under both MCR 2.114 and MCL 600.2591. To oversimplify somewhat, MCR 2.114(E) requires the trial court to impose sanctions if it finds that a party or attorney signed a pleading that was not well grounded in fact or law, or was filed for an improper purpose.<sup>3</sup> Determining whether this occurred requires the trial court to make a finding of fact.<sup>4</sup> MCL 600.2591 requires the trial court to award fees and costs to the prevailing

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<sup>1</sup> *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

<sup>2</sup> *State Farm Fire & Cas Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1991).

<sup>3</sup> See MCR 2.114(D)(2), (3).

<sup>4</sup> See *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990).

party if it finds that a claim was frivolous. This determination also requires the trial court to make a factual finding that takes into consideration the particular circumstances of the case.<sup>5</sup> We remanded because Judge Tertzag did not specify which of these provisions served as the basis for the sanctions he imposed, or why the sanctions were justified.

Having reviewed the proceedings on remand, we find ourselves once again without an adequate basis on which to justify the sanction award. While Judge Callahan concluded that “the sanctions were proper and they were properly ordered under MCR 2.114(E),” he reached this conclusion by reasoning that the complaint was evidently not well grounded in fact because the trial court granted summary disposition. However, the mere fact that a party did not ultimately prevail is not a basis for imposing sanctions.<sup>6</sup> Rather, to impose sanctions under MCR 2.114(E) for the fact that Kelly filed a complaint regarding a piece of property he did not own at the time, the trial court must find that Kelly violated his obligation to certify that the complaint was “well grounded in fact and warranted by existing law” “to the best of [his] knowledge, information and belief formed after reasonable inquiry.”<sup>7</sup> Neither Judge Tertzag nor Judge Callahan expressly made this finding, and we are unwilling to do so based on the bare fact that Kelly’s name was not on the deed when the complaint was filed, particularly given that it is not this Court’s role to act as a factfinder.<sup>8</sup> Without a valid factual basis to justify the sanction award, we are compelled to conclude that the trial court clearly erred in imposing sanctions, and we therefore reverse.

Reversed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Kathleen Jansen

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<sup>5</sup> See *Powell Prod, Inc v Jackhill Oil Co*, 250 Mich App 89, 94-95; 645 NW2d 697 (2002).

<sup>6</sup> See *Kitchen v Kitchen*, 465 Mich 654, 663; 641 NW2d 245 (2002).

<sup>7</sup> MCR 2.114(D)(2).

<sup>8</sup> See *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34 n 12; 609 NW2d 567 (2000) (Court of Appeals role is to review the trial court’s decision, not to find facts).