STATE OF MICHIGAN

COURT OF APPEALS

JOHN DAVID LANGLOIS,

Plaintiff-Appellee,

v

CONSTANCE MOORE LANGLOIS,

Defendant-Appellant.

UNPUBLISHED
October 30, 2008

No. 280764
Oakland Circuit Court
LC No. 1999-626705-DM

Before: O'Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right a circuit court order dividing a guardian ad litem's fees equally between the parties, and denying defendant's request for sanctions pursuant to MCR 2.114(E). We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

Since the entry of the parties' divorce judgment in 2001, they have battled continuously over custody and support issues involving their daughter. The parties' present dispute arises from a November 2006 motion that plaintiff filed seeking to temporarily suspend defendant's parenting time pending the initiation of an investigation by Child Protective Services (CPS) into defendant's living conditions, and defendant's subsequent motion to limit plaintiff to supervised visitation. Because the circuit court found that the parties could not resolve their differences in the best interests of their child, it appointed a guardian ad litem (GAL), and reserved ruling on who would pay the fees that the GAL incurred.

After the parties resolved both motions with assistance from the GAL, plaintiff moved to apportion the GAL's fees equally between the parties. Defendant objected and filed a motion for sanctions, asserting that plaintiff had filed his November 2006 motion in violation of MCR 2.114(E) and (F). The circuit court granted plaintiff's motion and denied defendant's motion.

A party or the party's attorney must sign every document that the party files in an action. 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," and has not been filed "for any improper purpose." MCR 2.114(D)(2), (3). 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). The imposition of a sanction becomes mandatory on a "finding that a

pleading was signed in violation of the court rule."[1] *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990).

"To impose a sanction under MCR 2.114(E), the trial court must first find that an attorney or party has signed a pleading in violation of MCR 2.114(A)-(D)." *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993). Such a determination "depends largely on the facts and circumstances of the claim." *Id.* A trial court's determination that a party violated the court rule involves a finding of fact by the trial court. *Contel Systems*, *supra* at 711. Therefore, this Court reviews for clear error "a trial court's decision regarding the imposition of a sanction" under MCR 2.114(E). *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997). A finding of fact qualifies as clearly erroneous "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The circuit court in this case did not clearly err in finding that plaintiff's motion had a meritorious basis. Plaintiff premised the motion primarily on the fact that the parties' child had recently reported to school personnel drunkenness and verbal abuse, including threats of harm, by defendant and her fiancé, which prompted a referral to CPS. Although defendant disputed whether the child had reported her concerns to each of the school personnel identified in plaintiff's motion, the parties did not dispute that the child had made such reports to a teacher, that those reports, if true, reflected that defendant's home was unfit, and that the teacher reported the matter to CPS. That CPS failed to substantiate evidence of neglect or abuse does not signify that plaintiff's emergency motion entirely lacked merit or was not well-grounded in fact. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003) ("That the alleged facts are later discovered to be untrue does not invalidate a prior reasonable inquiry."). Defendant presented no evidence to suggest that plaintiff or his attorney failed to make a reasonable inquiry into the circumstances supporting the motion or that, at the time they filed the motion, they knew or had reason to believe that the child's reports were untrue. Defendant thus failed to show that plaintiff's emergency motion as a whole was signed in violation of the court rule.

Defendant next asserts that the circuit court violated its own order by holding her partially responsible for the GAL's fees, without first making a finding whether she qualified as

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[1] In addition to the sanctions authorized under MCR 2.114(E), MCR 2.114(F) provides that "a party pleading a frivolous claim or defense is subject to costs" under MCR 2.625(A)(2). That rule states that "costs shall be awarded as provided by MCL 600.2591" "if the court finds on motion of a party that an action or defense was frivolous." MCR 2.625(A)(2). This rule and the referenced statute deal exclusively with the costs and fees related to the prosecution or defense of the entire action, or to a particular claim or defense asserted in the action. See 1 Longhofer, Michigan Court Rules Practice (5th ed), § 2114.13, p 352; *In re Costs & Attorney Fees*, 250 Mich App 89, 102-103; 645 NW2d 697 (2002). Because defendant's request for sanctions involved a postjudgment motion rather than any claim asserted in the complaint, MCR 2.114(F) does not apply here.

a party at fault. A court speaks through its written orders and judgments, not through its oral pronouncements. *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986). The circuit court's prior order stated, "Costs [for the GAL] to be paid by who I decide later, who should pay if one parent is 'at fault.'" The precise meaning of this order arguably appears ambiguous on its face, but considering the written order in light of defendant's argument at the motion hearing and the circuit court's bench ruling, it becomes clear that the court intended to hold one party solely responsible for the GAL's fees if the court "decide[d] . . . that one parent is being totally unreasonable here and not looking out for the welfare of the child," with respect to the custody battle commenced in November 2006. Taken in this context, the circuit court's written order simply does not suggest that a party must bear some level of fault to share liability for a portion of the GAL's fees. Furthermore, because defendant failed to establish that plaintiff's counsel signed the November 2006 emergency motion in violation of the court rule, the circuit court's order that the parties equally bear responsibility for the GAL's fees does not qualify as inconsistent with the court's prior order stating that it would decide later who should pay.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher