STATE OF MICHIGAN

COURT OF APPEALS

SABRINA J. HAMMOND,

Plaintiff-Appellant,

and

LYNDA S. MAYS,

Appellant,

v

SHERWIN L. PRIOR,

Defendant-Appellee.

UNPUBLISHED
June 2, 2009

No. 285087
Oakland Circuit Court
LC No. 2007-086210-CK

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for costs for a frivolous action. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant cohabitated for some time and had a child in common. When they separated, a custody battle ensued. While that action was pending, plaintiff sued defendant for promissory estoppel (Count I), intentional infliction of emotional distress (Count II), and breach of contract (Count III), alleging that during the course of their relationship defendant promised to provide for her financially, buy her a house, and provide for her and any child they had for the rest of their lives. Plaintiff asserted that in reliance on defendant's promises she quit her job, cared for the home on a full-time basis, and "agreed to become pregnant and have a child for Defendant." Her allegations regarding the second and third counts were conclusory; the only terms of the apparently oral contract were defendant's alleged agreement to provide for plaintiff if she conceived a child and resigned from her job to care for their home. Shortly after filing the complaint, plaintiff filed interrogatories and noticed defendant's deposition.

After transferring the action to the same court that was hearing the custody matter, defendant moved for summary disposition under MCR 2.116(C)(8) (failure to state a claim) and

(C)(10) (no genuine issue of material fact). He argued that this was a standard "palimony" case which is prohibited by Michigan law, specifically, *Featherston v Steinhoff*, 226 Mich App 584; 575 NW2d 6 (1998), and *Carnes v Sheldon*, 109 Mich App 204; 311 NW2d 747 (1981). Plaintiff responded that claims like hers are allowed by Michigan law where there is additional consideration, and domestic services have been found to be adequate, independent consideration. *Tyranski v Piggins*, 44 Mich App 570, 574; 205 NW2d 595 (1973).

The trial court, after hearing argument, granted defendant's motion, noting that this was a meretricious relationship and so plaintiff's services were presumed to be gratuitous. The court found that plaintiff's pleadings failed to overcome that presumption and that the contract she alleged was barred by the statute of frauds. The pleadings did not establish a question of fact regarding the parties' expectations of giving and receiving payment. The order granting defendant's motion for summary disposition entered January 16, 2008 and was not appealed.

Defendant moved for costs totaling over $10,000, including attorney fees under MCR 2.114(E) and MCL 600.2591, arguing that the suit was frivolous. Defendant argued that the case as pleaded was squarely precluded under Michigan case law, and plaintiff made no argument for expanding the law. Rather, the entire suit was simply plaintiff's attempt to obtain discovery for the custody action, in which no further discovery was available. Plaintiff's counsel[1] asserted that it was plaintiff's intent to expand the law set forth in *Featherston*. Just because the court ruled in defendant's favor on the summary disposition motion did not mean the complaint was frivolous. The suit was not intended to harass and was based on facts plaintiff believed were true. Defendant responded that the complaint made no attempt to expand the law or to distinguish the facts from *Featherston*. The trial court agreed and entered an order against both plaintiff and attorney Mays in the amount of $10,283.

We will not disturb a trial court's finding that a defense was frivolous unless the finding is clearly erroneous. *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997). A decision is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *Id*.

MCR 2.114(D) states:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> (1) he or she has read the document;
>
> (2) to the best of his or her 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

[1] The attorney present had been asked to "step in" for attorney Mays.

> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The sanctions for violating the rule are set forth in MCR 2.114(E) as follows:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

MCL 600.2591 states:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
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> * * *
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

The court reviewing an order of sanctions evaluates the claims or defenses at issue at the time they were made. See *In re Attorney Fees and Costs*, 233 Mich App 694, 702; 593 NW2d 589 (1999).

In *Carnes*, we stated that since the enactment of MCL 551.2, "the property rights afforded a legally married couple have not been extended to those engaged in meretricious relationships. Michigan has also abolished the civil cause of action for breach of contract to marry. MCL 551.301." *Carnes, supra* at 211.

Looking at the claims alleged in the complaint, we are not left with "a definite and firm conviction that a mistake has been made." *Szymanski, supra*. The count for intentional infliction of emotional distress lacked any factual support at all, and none were ever asserted. Thus, that count was frivolous based on MCL 600.2591(3)(a)(ii). The estoppel and contract counts were based entirely on plaintiff's theory of implied contract or express oral contract. The facts

supporting these claims are no different from those in *Carnes* and *Featherston*. Plaintiff made no attempt to argue why the law should now be expanded when this Court has declined such an opportunity numerous times in the past. Plaintiff provided no allegations that the parties had ever discussed her being paid for her services or that at the time she rendered the services she expected some independent consideration for them. While there is little record support for defendant's assertions that the entire suit was intended to provide further discovery for the custody matter, the trial court, who adjudicated both cases, was familiar with that issue and with the parties. Plaintiff's vague and unspecific assertions that her case is somehow different from *Carnes* and *Featherston* do not make it so. There is nothing in the complaint to lead us to conclude that the trial court erred in finding that plaintiff's complaint had no legal merit.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Douglas B. Shapiro