STATE OF MICHIGAN

COURT OF APPEALS

WILFRIEDE BURGESS, Individually and as Trustee of the WILFRIEDE M. BURGESS TRUST,

Plaintiff/Counter-Defendant-Appellee,

and

DOUGLAS MICHAEL BURGESS,

Plaintiff/Counter-Defendant-Appellant,

v

TROY WEST, L.L.C.,

Defendant/Counter-Plaintiff/Cross-Plaintiff,

and

GOLDEN HOMES,

Defendant/Cross-Defendant.

UNPUBLISHED
June 23, 2009

No. 283519
Oakland Circuit Court
LC No. 2004-062567-CK

DOUGLAS M. BURGESS,

Plaintiff-Appellant,

v

WILFRIEDE M. BURGESS, Individually and as Trustee of the WILFRIEDE M. BURGESS TRUST,

Defendant-Appellee.

No. 283556
Oakland Circuit Court
LC No. 2006-077502-CH

Before: Borrello, P.J., and Meter and Stephens, JJ.

PER CURIAM.

In these consolidated cases, appellant Douglas Burgess appeals as of right from the trial court's order in LC No. 2004-062567-CK denying his objections to a judgment of sanctions in the amount of $62,000, granted in favor of Wilfriede Burgess and the Wilfriede Burgess Trust. We affirm.

The court assessed the sanctions against Douglas after an evidentiary hearing in which evidence was presented that he initiated an action in 2004 concerning real property owned by the Wilfriede Trust for which his mother, Wilfriede, was the sole trustee. The action was filed in the name of the trust, but Wilfriede, who resided on the property, denied authorizing or knowing about the action and denied signing the complaint that was filed. The attorney who prepared the complaint testified that he consulted only with Douglas and asked him to have Wilfriede sign the complaint. Counsel filed the action after Douglas returned the complaint with Wilfriede's forged signature. After Wilfriede learned about the lawsuit in 2006, and retained counsel to represent her interests in the matter, the trial court dismissed the 2004 action, along with a related action that was filed in the name of the Wilfriede Trust in 2006 against the Edison Building Company. The various parties involved in these two actions thereafter filed motions for sanctions under MCR 2.114(E). Following an evidentiary hearing on December 20, 2007, the trial court assessed sanctions against Douglas, in favor of Wilfriede and her trust, under MCR 2.114(E), in the amount of $62,000.

On appeal, Douglas argues that the trial court erred in denying his objections to the proposed judgment for sanctions prepared by Wilfriede's counsel. He made the objections under the seven-day rule in MCR 2.602(B)(3), following the evidentiary hearing. He argues that the judgment should be set aside because proper notice of the evidentiary hearing was not provided.

In considering this claim, we note, as a threshold matter, that the particular means that Douglas chose to challenge the proposed judgment was improper, because objections under MCR 2.602 are intended to be limited to the form of the order or judgment. *Riley v 36th Dist Court Judge*, 194 Mich App 649, 650, 487 NW2d 855 (1992). However, this intention is not immediately obvious, see *id*. at 651, and a court is not bound by a party's choice of labels for an action because this would place form over substance, *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988); see also *Tucker v Clare Bros Ltd*, 196 Mich App 513, 518 n 1; 493 NW2d 918 (1992). Also, we will not disturb a trial court's decision when it reaches the right result, even if it relied on inappropriate reasons. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Substantively, we reject Douglas's argument on appeal that the standards for setting aside default judgments apply to his objections to the proposed judgment, inasmuch as the matter before us does not involve a default entered under MCR 2.603, but rather the trial court's award of sanctions under MCR 2.114(E), following an evidentiary hearing. Instead, Douglas's claim of deficient notice in his objections to the proposed judgment more properly falls within the scope of a trial court's authority to grant rehearing or reconsideration under MCR 2.119(F), although Douglas prematurely filed his claim because the trial court had not yet entered the judgment.

Under MCR 2.119(F)(3), a trial court has considerable discretion to grant rehearing or reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties. See *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000). This Court reviews the trial court's decision for an abuse of discretion. See *id*. The decision whether to hold an evidentiary hearing is also reviewed for an abuse of discretion. *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995); see also MCR 2.119(E)(2). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). To the extent that this issue requires interpretation of a court rule, which is a question of law, our review is de novo. *People v Kimble*, 470 Mich 305, 308-309; 684 NW2d 669 (2004). Any factual findings are reviewed for clear error. MCR 2.613(C).

Examined in this context, we find no basis for disturbing the trial court's decision to deny Douglas's objections. To the extent that Douglas argues that he was denied due process arising from a lack of proper notice, we note that due process generally requires that a party in a civil case be afforded notice of the nature of the proceedings before being deprived of a property interest. *Maxwell v Dep't of Environmental Quality*, 264 Mich App 567, 574; 692 NW2d 68 (2004); *Vicencio v Ramirez*, 211 Mich App 501, 504; 536 NW2d 280 (1995). "In any proceeding involving notice, due process requires that the notice given be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id*. Under MCR 2.107(C)(3), service of filed papers by first-class mail, addressed to the person to be served, is permitted and effective at the time of mailing. MCR 2.107(C)(3); *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626; 750 NW2d 228 (2008). Under MCR 2.613(A),

> [a]n error . . . or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

Limiting our review to the record presented to the trial court, *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990), it is apparent that Douglas's own proofs somewhat contradicted his position that the use of the street address "Auburn Rd." rather than "W. Auburn Rd." materially affected the delivery of mail to his home by the post office. It may logically be inferred from Douglas's possession of the postmarked envelopes that he submitted in support of his objections that he received mail containing both addresses.[1]

Although Douglas asserts on appeal that he found notice of the hearing "in the front door" of his house, not in his mailbox, after the December 20, 2007, evidentiary hearing, he does not cite any factual support for this claim as required by MCR 7.212(C)(7), and there is no

---

[1] We note that Douglas did not offer evidence of the contents of the three postmarked envelopes that he filed with his objections, but the postmarked date on one of the envelopes, November 16, 2007, is the same date shown in a proof of service of a subpoena for Douglas to appear at the December 20, 2007, hearing.

indication in the record that he raised it below. This Court will not search the record for factual support for a party's claim. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004). In any event, the trial court did not abuse its discretion by, in substance, denying a rehearing or reconsideration. Considering that Douglas did not file any affidavit to support his claim or otherwise offer evidence that called into question his receipt of notice of the December 20, 2007, hearing, it cannot be said that the trial court's decision constituted an abuse of discretion. *Woodard*, *supra* at 557.

We also reject Douglas's challenge to the trial court's decision to award an additional sanction of $20,000 beyond the amount of $42,000 for attorney fees, experts witnesses, and other expenses requested by Wilfriede's counsel. Because this issue was addressed and decided by the trial court at the December 20, 2007, hearing, we conclude that nothing further was required by Douglas to preserve it for appellate review. MCR 2.517(A)(7); *Reed v Reed*, 265 Mich App 131, 163; 693 NW2d 825 (2005). We review the amount of a sanction award under MCR 2.114(E) for an abuse of discretion. *Maryland Cas Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997). To the extent that this issue requires interpretation of a court rule, our review is de novo. *Kimble*, *supra* at 308-309.

The trial court did not abuse its discretion in awarding the additional $20,000 as sanctions. Although the trial court articulated that it was making an award for "everybody else's time," the award was granted solely in favor of Wilfriede and the Wilfriede Trust. Moreover, contrary to Douglas's argument on appeal, the record does not reflect that the trial court, expressly or implicitly, awarded punitive damages. Rather, the court expressed concern regarding the time involved beyond that reflected in counsel's billings. The trial court, in its decision on the record, mentioned that Douglas "continue[d] to sue" Wilfriede when she "call[ed] him on" his fraudulent actions. The record demonstrates that the trial court was aware of the impact of Douglas's actions on Wilfriede. MCR 2.114(E) is not limited to actual costs and reasonable attorney fees, but rather grants a trial court discretion to fashion an "appropriate sanction." *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 726-727; 591 NW2d 676 (1998). The additional award of $20,000 was appropriately tailored to the time and circumstances that confronted Wilfriede because of Douglas's undertaking to supply a complaint with her forged signature and his pursuit of the lawsuit in the name of her trust. The amount of the sanction awarded, while incapable of a mathematical analysis, does not fall "outside the principled range of outcomes." *Woodard*, *supra* at 557.

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Cynthia Diane Stephens