

STATE OF MICHIGAN
COURT OF APPEALS

MACK JONES, LUCY RUCKER, and
MARGARET COUCH JONES,

UNPUBLISHED
September 10, 2009

Plaintiffs/Counter-Defendants-
Appellees,

v

PERCY CASH,

Defendant/Counter-Plaintiff-
Appellant.

No. 286137
Wayne Circuit Court
LC No. 06-611304-NZ

Before: M. J. Kelly, P.J. and K. F. Kelly and Shapiro, JJ.

MEMORANDUM.

Defendant appeals as of right the trial court's order denying defendant's motion for sanctions. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in determining that plaintiffs' complaint was not frivolous. *Schroeder v Terra Energy, Ltd*, 223 Mich App 176, 195; 565 NW2d 887 (1997). Contrary to defendant's contentions, the court's statements at the October 12, 2007, hearing are not conclusive and the trial court's order from that date did not address either sanctions or the frivolity of the complaint. When the court later examined defendant's motion for sanctions, it was not bound to its previously stated impressions. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977) (a court speaks through its orders and judgments, not its oral pronouncements).

Defendant has failed to show that the trial court abused its discretion by denying case evaluation sanctions pursuant to MCR 2.403(O)(11). *Harbour v Correctional Medical Services, Inc*, 266 Mich App 452, 465; 702 NW2d 671 (2005). Defendant correctly argues that sanctions were authorized by MCR 2.403(0)(2)(c), but does not explain why the trial court's decision to apply the "interest of justice" exception was improper. In light of defendant's failure to address the trial court's ruling, he is not entitled to relief. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987) (appellate relief is precluded where the appellant fails to address the basis of the trial court's decision).

Contrary to defendant's assertions, plaintiffs' failure to prosecute the action is not a basis for the court to award sanctions under MCR 2.114(D) or (E). The factors that he lists from *North v Dep't of Mental Health*, 427 Mich 659; 397 NW2d 793 (1986) and its discussion of involuntary dismissal are inapposite to whether the court should have ordered plaintiffs to pay defendant's attorney fees. Furthermore, the determination whether a claim is frivolous is based on the circumstances at the time that it was asserted. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003). Therefore, the inactivity in pursuing the action is immaterial to the analysis of its frivolity.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro