STATE OF MICHIGAN

COURT OF APPEALS

ROBERT DAVIS,

Plaintiff-Appellant,

v

MICHIGAN HIGH SCHOOL ATHLECTIC ASSOCIATION, INC.,

Defendant-Appellee.

UNPUBLISHED
January 21, 2010

No. 287623
Wayne Circuit Court
LC No. 08-116391-PZ

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

PER CURIAM.

Plaintiff appeals as of right an order for payment of costs to defendant in the amount of $6,076.60 for the filing of a frivolous action in this declaratory judgment action. We affirm.

Plaintiff first argues that the trial court erred by sua sponte imposing sanctions. Plaintiff contends that the trial court did not have authority to impose sanctions against plaintiff under MCR 2.114(F), MCR 2.625(A)(2), or MCL 600.2591 because defendant did not file a formal motion seeking sanctions for the filing of a frivolous lawsuit. The trial court imposed sanctions on plaintiff because his complaint presented a "frivolous cause of action." Although the trial court did not state at the hearing the legal grounds upon which it relied to impose sanctions on plaintiffs, a trial court can impose sanctions sua sponte on a party for filing a frivolous complaint. See MCR 2.114(E). Thus, the trial court had authority to impose sanctions against plaintiff.[1]

Plaintiff next argues that the trial court erred in finding that his action was frivolous because he made three arguments that supported his position and cited appropriate case law. We disagree.

[1] Although the order is labeled "Order of Dismissal with Prejudice and with MCL 600.2591 Cost and Fees," sanctions are appropriate under MCR 2.114, rather than MCL 600.2591, because the trial court sua sponte imposed the sanctions. It is the substance of the trial court's order, rather than its label, that steers this Court's review.

MCR 2.114(D)(2) provides, in part, that a party, by signing a document, certifies, "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." The purpose of imposing sanctions under MCR 2.114 is to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or which are intended to serve an improper purpose. *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 719; 591 NW2d 676 (1998). Whether the inquiry was reasonable is determined by an objective review of the effort taken to investigate the claim before filing suit. *Attorney Gen v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). If a violation of MCR 2.114 is found, sanctions are mandatory. MCR 2.114(E).

Plaintiff's arguments consisted of his contention that language in defendant's 2008-2009 membership resolution violated MCL 380.11a(4). Specifically, he argued that the language requiring that (1) school districts be members of defendant for one year, (2) school districts only belong to associations who have the same rules as defendant, and (3) school districts pass the resolution without amendment all violated MCL 380.11a(4) and *Breighner v Michigan High School Athletic Association, Inc*, 471 Mich 217; 683 NW2d 639 (2004).

Under MCL 380.11a(4), "A general powers school district may enter into agreements or cooperative arrangements with other entities, public or private, or join organizations as part of performing the functions of the school district. . . ." Plaintiff also cited to portions of *Breighner, supra* at 230-231, which states:

> The MHSAA is now a private corporation that is wholly self-regulated. Membership is, by statute, completely voluntary. See MCL 380.11a(4) (providing that [a] ... school district may join organizations as part of performing the functions of the school district). In short, the MHSAA in its current form is not "created by state or local authority."
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> We further note that our comment in Kirby-that the MHSAA is a creature of its members, with no independent authority over schools or students-merely lends further credence to our conclusion that the MHSAA is not a public body. Michigan schools are in no way obligated to join the MHSAA, and they remain free to join other athletic organizations in lieu of, or in addition to, the MHSAA. Member schools do not relinquish authority or decision-making capacity to the MHSAA, nor does the MHSAA have any independent authority over its members. [*Id*. (internal quotations omitted).]

It is undisputed that the Highland Park School Board, of which plaintiff is a member, voluntarily adopted the 2008-2009 membership resolution of defendant and thereby agreed not to amend the resolution, to abide by its terms for one year, and to adhere to defendant's rules and regulations.

Plaintiff's perplexing arguments contend that it is illegal for defendant to set uniform standards for becoming a member of its association. However, plaintiff's pleadings cite no authority supporting this position. What is vexing about plaintiff's arguments is that plaintiff instead cites to authority that is directly in opposition to his position.

Plaintiff argues that by not permitting amendments to the resolution defendant is in violation of *Breighner* because schools are forced to relinquish authority and decision-making capacity to defendant. This argument is misplaced. Defendant sets the terms of membership, and a school board's decision whether to join defendant is entirely voluntary. Nothing in the language of the membership resolution restricts a school's membership solely to defendant's organization. Plaintiff's arguments simply have no support in the law, and therefore sanctions were warranted under MCR 2.114(D)(2).

Next, plaintiff argues that the trial court violated his due process rights as a litigant proceeding in propria persona because he did not have notice that sanctions could be issued and he did not have an opportunity to be heard.[2] We disagree.

MCR 2.114 does not provide a procedure to be followed before sanctions can be imposed. *Hicks v Ottewell,* 174 Mich App 750; 436 NW2d 453 (1989). However, this Court has held with regard to MCR 2.114 that a party must receive some type of reasonable notice and opportunity to be heard before the imposition of sanctions. In *Hicks,* the trial court, on its own motion, imposed sanctions on an attorney and an accountant for having signed pleadings on behalf of a co-attorney without having received the authority to do so. *Id.* On appeal, the sanctioned parties argued that the trial court did not provide them with advance notice of the charges against them. This Court found no due process violation occurred because the sanctioned parties were given ample opportunity to be heard at a hearing prior to the trial court's imposition of sanctions. *Id.*

Plaintiff was afforded notice that sanctions were being sought because defendant, in its answer, requested sanctions under MCR 2.114. At the hearing on the motion for declaratory judgment, plaintiff extensively argued the merits of his motion. At this hearing, the trial court was able to assess the motives of the litigants and determine the factual and legal basis supporting the claim. The trial court concluded, based on plaintiff's arguments and pleadings, that the action was frivolous. The court was not required to conduct a separate hearing where it was satisfied that it has been able to assess the compliance or lack of compliance with MCR 2.114. Plaintiff was afforded minimal due process protections through the court's motion procedure.

Lastly, plaintiff argues that the trial court erred by denying his motion for declaratory judgment because defendant's membership resolution violated MCL 380.11a and *Breighner*. This Court reviews de novo both questions of law arising from a declaratory judgment action and questions of statutory interpretation. *Guardian Environmental Services, Inc v Bureau of Construction Codes and Fire Safety,* 279 Mich App 1, 5-6; 755 NW2d 556 (2008). This Court

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[2] Plaintiff's additional argument that the trial court did not take his ability to pay into account when imposing sanctions, as required by *People v Harerra,* 204 Mich App 333; 514 NW2d 543 (1994), is misplaced. A determination regarding plaintiff's ability to pay is not necessary because such a finding is only required when a prisoner in question is challenging the propriety of his conviction. *Id.* at 339.

also reviews a trial court's decision to grant or deny declaratory relief for an abuse of discretion. *Id*. at 6.

As discussed above, the trial court did not err in concluding that plaintiff's cause of action was frivolous. Therefore, the trial court did not abuse its discretion by denying plaintiff's motion for declaratory judgment.

Affirmed.

/s/ Mark D. Cavanagh
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro