

STATE OF MICHIGAN
COURT OF APPEALS

In re TOBY JACOB RHODES.

TOBY JACOB RHODES,

Petitioner-Appellant,

v

PEOPLE OF THE CITY OF SOUTHFIELD,

Respondent-Appellee.

UNPUBLISHED

October 2, 2012

No. 305187

Oakland Circuit Court

LC No. 2011-119087-AS

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Petitioner, in propria persona, appeals as of right an order entered by the trial court assessing a \$100 sanction against petitioner under MCR 2.625. We affirm.

Petitioner had criminal charges arising from two separate incidents, and filed a writ of superintending control complaint in Oakland Circuit Court requesting that the cases be removed from the jurisdiction of the 46th District Court. The circuit court granted respondent's motion to dismiss petitioner's writ of superintending control. Petitioner then filed a motion for relief from dismissal of the writ for superintending control. The circuit court denied petitioner's motion for relief with prejudice, and granted respondent's request that petitioner be assessed a \$100 sanction.

Petitioner first contends that the \$100 sanction assessed against him by the trial court was unnecessary and unreasonable for an indigent who is exercising his civil rights in court. We disagree.

Generally, the amount of sanctions imposed by a trial court is reviewed for an abuse of discretion.¹ However, this issue was not properly preserved at trial. Accordingly, we review

¹ *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002).

petitioner's unpreserved claim for plain error affecting his substantial rights.² "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights."³

Petitioner argues that he has the right to file a motion and should not be "punished" for doing so. A trial court's authority to sanction parties for improper filings of claims, defenses, and pleadings is recognized in the court rules, including MCR 2.625 and MCR 2.114(E),(F), as well as in MCL 600.2591. This Court has recognized the court's authority to award sanctions in appropriate circumstances even against a criminal defendant representing himself in post-conviction proceedings.⁴ In the present case, petitioner does not make any argument that attacks the factual or legal basis for the award. The mere assertion that petitioner should not be "punished" for his motion does not present a valid reason for this Court to overturn the award.

Petitioner also asserts that \$100 is "excessive" or "unreasonable" for an indigent. The amount of an award of sanctions for frivolous claims, defenses, and pleadings relates to costs and expenses of the responding party. See MCL 600.2591(2); MCR 2.114(E),(F); MCR 2.625. He does not make any argument that \$100 was excessive or unreasonable in that measure. Furthermore, he does not cite any authority that indigence renders a \$100 sanction excessive or unreasonable per se.

Petitioner's contention that the \$100 sanction is "unnecessary" is meritless. Although a party has the right to file a motion in court, as asserted by petitioner, if the motion is frivolous, then that party may be subject to sanctions. The trial court relied on the arguments from respondent and found that nothing new had been asserted in petitioner's motion for relief from dismissal of writ of superintending control. In accordance with this finding, the trial court found it appropriate to grant respondent's request that sanctions be imposed on petitioner. Under the circumstances, this sanction was not "unnecessary" because petitioner failed to bring any new contentions in his motion for relief from dismissal. Accordingly, the trial court did not err in assessing a \$100 sanction against petitioner.

Petitioner next argues that the respondent requested sanctions be assessed against petitioner as a retaliatory act for filing a motion, and respondent used sanctions and other measures as an attempt to chill the exercise of petitioner's civil rights and due process. We disagree.

Petitioner challenges respondent's motivation in requesting that sanctions be imposed on petitioner. Respondent's motivation does not control the validity of the trial court's determination that petitioner's motion was frivolous.

² *Kern v Blethen-Coluni*, 240 Mich App 333 336 612 NW 2d 838 (2000).

³ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

⁴ *People v Herrera*, 204 Mich App 333; 514 NW2d 543 (1994).

Petitioner's failure to address the basis for the trial court's decision should alone preclude appellate relief.⁵ As previously explained, petitioner does not challenge the legal or factual basis of the trial court's decision. The purported ulterior motives of respondent are not a basis for this Court to interfere with the award. Thus, review of this issue is precluded because petitioner's argument failed to address the validity of the trial court's decision.

Affirmed.

/s/ Kathleen Jansen

/s/ Stephen L. Borrello

/s/ Jane M. Beckering

⁵ *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). See also *Roberts & Son Contracting, Inc v North Oakland Development 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).