

STATE OF MICHIGAN
COURT OF APPEALS

DIONEL M. ROSEMA,

Plaintiff-Appellee,

v

ROBERT JOHN ROSEMA,

Defendant-Appellant.

UNPUBLISHED
October 18, 2012

No. 306424
Kent Circuit Court
LC No. 03-009851-DM

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Robert Rosema, appeals the trial court's order that awarded plaintiff, Dionel Rosema, \$500 in attorney fees and costs. For the reasons set forth below, we affirm, but remand for proceedings consistent with this opinion.

I. FACTS AND PROCEEDINGS

Plaintiff and defendant married on June 7, 1986. On May 2, 2003, plaintiff and defendant signed a membership purchase and security agreement for a time-share at the Paradise Village Beach Resort & Spa for \$15,950. The agreement lists the purchasers as plaintiff, defendant, and a business, Great Lakes Jaw Surgery, P.C. On April 28, 2005, the court entered a consent judgment of divorce. The judgment contains no reference to the time-share, but awarded defendant Great Lakes Jaw Surgery and all assets of the business.

Defendant's lawyer sent plaintiff a letter dated April 8, 2011, in which she referenced the time-share, and asked plaintiff to sign an assignment of membership document, "transferring the property exclusively to the PC." Plaintiff declined and, on May 18, 2011, defendant filed an ex parte motion for an order to show cause why plaintiff failed to comply with the divorce judgment. Defendant took the position that, though the time-share is titled in the names of plaintiff, defendant, and Great Lakes Jaw Surgery, the business actually owns the time-share because the bills for the vacation property were sent to Great Lakes Jaw Surgery. According to defendant, because the divorce judgment awarded him the business and all assets of the business, plaintiff should be ordered to assign her interest in the time-share to Great Lakes Jaw Surgery.

At the motion hearing, defense counsel acknowledged that he produced no documents to support the point, but that Great Lakes Jaw Surgery actually paid the bills for the time-share. In response, plaintiff argued that the time-share was a vacation property that had nothing to do with

any business conducted by Great Lakes Jaw Surgery. She further argued that, because the time-share is clearly titled in her name also, and the divorce judgment makes no mention of the asset, she is not required to relinquish her interest in the property. Plaintiff also requested an award of costs and attorney fees on the ground that defendant's motion was an improper contempt motion for her alleged failure to comply with the divorce judgment when the property at issue was never divided or awarded in the divorce judgment. The trial court observed that the purchase agreement lists plaintiff, defendant, and the business on the membership purchase and security agreement, in essence holding that the terms of the purchase document control and that the document clearly shows plaintiff owns an interest in the time-share. The court denied defendant's motion for an order to show cause, but denied plaintiff's request for costs and attorney fees. The trial court entered an order reflecting its decision on June 28, 2011.

On August 9, 2011, defendant filed a motion for enforcement of the divorce judgment. Defendant again argued that plaintiff should be ordered to sign over her interest in the time-share because Great Lakes Jaw Surgery owns it and all assets of the business were awarded to defendant in the divorce judgment. Defendant attached documents showing that Great Lakes Jaw Surgery made payments on the promissory note for the time-share, as well as maintenance payments. According to defendant, the divorce judgment required plaintiff to execute any legal documents to effectuate the terms of the judgment and that plaintiff failed to do so by declining to sign over her interest in the time-share. In response, plaintiff again raised the point that the divorce judgment makes no reference to the time-share as an asset of the parties, that it is jointly owned, and that, regardless whether Great Lakes Jaw Surgery made payments for the time-share, plaintiff has an equal ownership interest in it. Again, plaintiff asked the court to award her attorney fees and costs.

At the motion hearing, the trial court rejected defendant's argument that the divorce judgment granted defendant the time-share by virtue of the award to defendant of Great Lakes Jaw Surgery. On the basis of the ownership documents and purchase agreement, the trial court also rejected defendant's argument that payments made by Great Lakes Jaw Surgery established that the company alone owns the time-share. The court observed that it might be persuaded by evidence that the mediator for the parties' divorce considered the time-share to be a component of the business, but no evidence supported such a conclusion and neither party could remember the name of the mediator who handled the divorce, much less how the time-share was actually addressed during mediation. Accordingly, the trial court observed that, on the basis of the evidence presented, the time-share was simply an asset that was left out of the divorce judgment and it offered to hold a hearing on how it should be divided by the parties. Because of the lack of support for defendant's motion, the trial court awarded plaintiff \$500 in attorney fees and costs.

II. DISCUSSION

Defendant argues that the trial court abused its discretion by awarding plaintiff attorney fees and costs. As this Court explained in *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010):

This Court reviews a trial court's ruling on a motion for costs and attorney fees for an abuse of discretion. *Klinke v Mitsubishi Motors Corp*, 219 Mich App

500, 518; 556 NW2d 528 (1996); *In re Condemnation of Private Prop for Hwy Purposes*, 221 Mich App 136, 139–140; 561 NW2d 459 (1997). An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes. *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006). A trial court’s findings of fact, such as whether a party’s position was frivolous, may not be set aside unless they are clearly erroneous. MCR 2.613 (C); see *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002).

We hold that the trial court did not abuse its discretion when it awarded plaintiff \$500 in attorney fees and costs. As the *Keinz* Court further opined at 141:

“Awards of costs and attorney fees are recoverable only where specifically authorized by a statute, a court rule, or a recognized exception.” *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997). MCL 600.2591(1) grants a court the authority to award sanctions in the form of attorney fees and costs to a prevailing party if an action or defense is deemed “frivolous.” For an action or defense to be considered “frivolous,” at least one of the following conditions must be met:

(i) The party’s primary purpose in initiating the action . . . 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. [MCL 600.2591(3)(a).]

The record reflects that the trial court correctly held that defendant’s motion to enforce the divorce judgment was “devoid of arguable legal merit.” MCL 600.2591(3)(a)(iii). Defendant filed his initial motion to show cause why plaintiff should not be held in contempt for failing to sign over her interest in the time-share. The trial court denied the motion because the divorce judgment did not address the time-share and the time-share documents clearly identified plaintiff as an owner of the time-share. The trial court was not persuaded by defendant’s assertion that Great Lakes Jaw Surgery made payments toward the purchase and maintenance of the time-share. The substance of the trial court’s ruling was that plaintiff had no obligation under the divorce judgment to sign over her interest in the time-share. Defendant then filed a motion to enforce the divorce judgment, again arguing that the judgment required plaintiff to sign over her interest in the time-share to Great Lakes Jaw Surgery, which was awarded to defendant. There was clearly no legal merit to defendant’s claim because, again, plaintiff is indisputably an owner of the time-share and the division of that asset was not addressed in any way in the divorce judgment. Further, the trial court already ruled on the identical issue in the prior motion. As contemplated by the trial judge, the proper legal action was to hold a hearing on how to divide the time-share as an asset that was mistakenly left out of the judgment, perhaps through a motion for relief from judgment, MCR 2.612(C)(1)(a). The trial court did not abuse its discretion in awarding plaintiff attorney fees and costs for having to defend defendant’s groundless motion.

Defendant further argues that the trial court should have held an evidentiary hearing on the amount of attorney fees and costs awarded. The trial court awarded plaintiff \$500 for briefing and appearing at the motion hearing. Defendant failed to challenge the amount of fees the trial court awarded. A court should hold an evidentiary hearing when a party challenges the reasonableness of the attorney fees. *Miller v Meijer, Inc.*, 219 Mich App 476, 479; 556 NW2d 890 (1996). Defendant failed to do so and we find no error or abuse of discretion.

We also hold that plaintiff is entitled to attorney fees and costs on appeal because this amounts to a vexatious appeal by defendant. MCR 7.216(C)(1)(a). While defense counsel asserts that she appeared at the ex parte motion hearing “as a second year attorney,” inexperience cannot excuse the motion that followed, which merely reiterated the same arguments explicitly rejected by the trial court, and which were clearly contradicted by the purchase documents of the very asset at issue. Further, rather than accept the court’s offer to hold a hearing on how the asset should be divided—which was the proper method to determine ownership of the asset and which could have resulted in a finding that the timeshare should be awarded to him—defendant appealed a \$500 award that was clearly correct. Thus, we hold that “the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal.” MCR 7.216(C)(1)(a). We remand the case to the trial court for a determination of plaintiff’s costs and fees.

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly