STATE OF MICHIGAN

COURT OF APPEALS

GEORGE MICHAEL FORRESTER,

Plaintiff-Appellant,

v

STEPHEN B. GRAHAM,

Defendant-Appellant.

UNPUBLISHED
September 25, 1998

No. 199330
Emmet Circuit Court
LC No. 93-002326 NM

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant sanctions assessed jointly and severally against plaintiff and his attorney. The trial court imposed sanctions after concluding that plaintiff's claim of legal malpractice against defendant was frivolous and devoid of any arguable legal merit. We affirm.

Plaintiff argues that the trial court clearly erred in finding that plaintiff's legal malpractice action was frivolous, asserting that he presented a claim with arguable legal merit, and a legally complex issue or an issue of first impression. A trial court's finding that a claim is frivolous will not be reversed on appeal unless clearly erroneous, *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997), while the trial court's determination concerning the amount of sanctions imposed is reviewed for an abuse of discretion, *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

All pleadings require the signature of the attorney of record to ensure that: (1) the attorney has read the pleading; (2) to the best of the attorney's knowledge, belief, and information, after conducting a reasonable inquiry, the pleading is well grounded in fact and warranted by existing law, or a good faith extension, reversal or modification of existing law; and (3) the pleading was not interposed for any improper purpose. MCR 2.114(C) and (D). A claim is considered frivolous if: (1) its primary purpose was to harass, embarrass, or injure the prevailing party; (2) there was no reasonable basis to believe that the underlying facts of the pleading were true; or (3) it was devoid of any arguable legal merit.

MCL 600.2591(3)(a); MSA 27A.2591(3)(a); *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266; 548 NW2d 698 (1996).

The reasonableness of an attorney's inquiry into the factual and legal viability of a pleading is reviewed under an objective standard of reasonableness, *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995), and depends on the particular facts and circumstances of the case, *Louya v William Beaumont Hospital*, 190 Mich App 151, 164; 475 NW2d 434 (1991). The focus is on the attorney's efforts to investigate the claim at the time it was filed. *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993). Although an attorney's "subjective good faith is irrelevant," *id*., an attorney's reasonable inquiry is not invalidated when alleged facts are later found to be untrue, *Lockhart v Lockhart*, 149 Mich App 10, 14-15; 385 NW2d 709 (1986).

Plaintiff argues that his legal malpractice claim had arguable legal merit, asserting that a reasonable inquiry into its factual and legal viability allowed him to conclude that his antenuptial agreement would be enforceable and construed in accordance with Illinois law. Regarding plaintiff's argument pertaining to the enforceability of the antenuptial agreement, we recognize that antenuptial agreements are no longer considered "void ab initio as contrary to public policy" in Michigan so long as certain fairness standards are met. *Rinvelt v Rinvelt*, 190 Mich App 372, 380, 382; 475 NW2d 478 (1991). Agreements violating these fairness standards include those: (1) that are obtained through fraud, duress, mistake, misrepresentation, or nondisclosure of a material fact; (2) that are unconscionable when executed; or (3) that, if enforced, would be unfair and unreasonable because the facts and the circumstances of the parties have changed since execution. *Id*. In plaintiff's underlying divorce action, evidence was presented to show that: (1) his former wife was presented with the agreement nine days before their wedding; (2) she was twenty-five years old when she signed the agreement; (3) it had several blanks and missing appendices when she presented it to her attorney; (4) plaintiff, who was forty years old at the time, had more education, wealth, standing, sophistication, and business acumen than his former wife; and (5) they had children together. Applying the aforementioned fairness standards to these facts, we conclude that the trial court's determination, that the agreement was unenforceable as a matter of law, was not clearly erroneous. It failed to meet these standards because it was (1) fraudulent; (2) unconscionable; and (3) the parties' circumstances changed. *Szymanski, supra* at 436.

Regarding plaintiff's argument that a reasonable inquiry allowed him to conclude that the antenuptial agreement would have been construed in accordance with Illinois law based on the choice-of-law provision, this Court has previously explained that such provisions are enforceable unless:

> (1) the chosen state has no substantial relationship to the parties or the transaction, or (2) there is no reasonable basis for choosing that state's law . . . [or] when application of the chosen state's law . . . "would be contrary to the fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issues, and . . . would be the state of the applicable law in the absence of an effective choice of law by the parties." [*Martino v Cottman Transmission Systems, Inc*, 218 Mich App 54, 60; 554 NW2d 17 (1996).]

Therefore, regardless of whether a trial court employs the "most significant relationship" test, see *Chrysler Corp v Skyline Industrial Services, Inc*, 199 Mich App 366, 369-373; 502 NW2d 715 (1993), rev'd on other grounds 448 Mich 113 (1995), or the more common "interest-analysis" test, see *Sutherland v Kennington Truck Service, Ltd*, 454 Mich 274, 280, 286; 562 NW2d 466 (1997), to determine which state's law applies, a choice-of-law provision is unenforceable if it is contrary to Michigan "public policy," *Martino*, *supra* at 60-61. Given that plaintiff's antenuptial agreement is "void ab initio as contrary to public policy" because it fails to meet the aforementioned "fairness standards," *Rinvelt, supra* at 380, 382, the trial court did not clearly err by concluding that the agreement was unenforceable in Michigan, *Szymanski, supra* at 423, 436.

Plaintiff next argues that the issue regarding whether damages could be based on the loss of the use of an unconscionable agreement during settlement negotiations constituted a legally complex issue, *Stafford*, *supra* at 43, or an issue of first impression, *LaRose*, *supra* at 210-211, and, therefore, his action was not frivolous. Plaintiff's claim had to fail given that the "speculative" damages issue of plaintiff's legal malpractice action is well settled. *Luick*, *supra* at 808-809. Accordingly, this issue alone would justify a finding that the overall cause of action was frivolous.

Given the extremely favorable consent judgment of divorce that plaintiff obtained in his underlying divorce action, we conclude that the trial court did not clearly err by concluding that plaintiff's legal malpractice action was frivolous. A reasonable inquiry into the factual and legal viability of his claim would have alerted plaintiff that his alleged damages, based on the inability to use his antenuptial agreement and artwork documentation to acquire a "better settlement," were speculative at best. *Luick*, *supra* at 807. Therefore, because plaintiff's legal malpractice action had no arguable legal merit, and represented neither a legally complex issue nor an issue of first impression, we conclude that the trial court's determination that plaintiff's claim was frivolous was not clearly erroneous and its imposition of sanctions was appropriate.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra