STATE OF MICHIGAN

COURT OF APPEALS

SUZANNE DUDA, Plaintiff-Appellee,	UNPUBLISHED November 19, 1999
v	No. 211854 Ingham Circuit Court
FRANKLIN BRUSSOW, Defendant-Appellant.	LC No. 95-80856 ON REMAND

Before: Hoekstra, P.J., and McDonald and Meter, JJ.

PER CURIAM.

In this contract action, defendant appeals several orders of the district court and affirmed by the circuit court. This case is before us on remand from the Supreme Court for consideration as on leave granted 457 Mich 871; 586 NW2d 918 (1998). We affirm.

Defendant first argues that the circuit court improperly awarded costs and fees to plaintiff because the affidavit supporting plaintiff's bill of costs was not notarized. This Court reviews a trial court's ruling on a motion for taxation of costs for an abuse of discretion. *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 518; 556 NW2d 528 (1996). In addition, the interpretation and application of court rules and statutes present a question of law that is reviewed de novo. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998).

Defendant's argument rests on plaintiff's alleged noncompliance with MCR 2.625(F)(2) and (G)(2), which govern the procedure for taxing costs. Those subrules require that the party entitled to costs submit a bill of costs that is verified and contains a statement that the costs are correct, were necessarily incurred, and represent services actually performed. However, MCR 2.625(F) is inapplicable when the issue of costs is decided pursuant to MCL 600.2591; MSA 27A.2591 and requires a judicial determination. *Avery v Demetropoulos*, 209 Mich App 500, 503; 531 NW2d 720 (1994). MCR 2.625(F) refers "only to the procedure used where the clerk taxes costs." *Maryland Casualty v Allen*, 221 Mich App 26, 30; 561 NW2d 103 (1997). Thus, because costs here were determined under MCL 600.2591; MSA 27A.2591, defendant's reliance on the procedural requirements of MCR 2.625(F), and consequently MCR 2.625(G), as well, is misplaced.

MCR 2.625(A)(2) provides that costs assessed for bringing a frivolous action or defense shall be awarded pursuant to MCL 600.2591; MSA 27A.2591. The statute contains no requirement that the party entitled to costs submit a verified bill of costs. This Court should not add into a statute provisions that were not included by the Legislature. *In re Wayne County Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998), citing *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565 NW2d 844 (1997). Therefore, the absence of the notary's signature on the affidavit in support of plaintiff's bill of costs did not preclude the trial court from awarding plaintiff her reasonable costs and fees.

Defendant next claims that the district court erred in awarding sanctions pursuant to MCL 600.2591(3)(a); MSA 27A.2591(3)(a). According to defendant, neither his defense nor his counterclaim were frivolous. A trial court's finding that a claim or defense was frivolous will not be reversed on appeal unless clearly erroneous. *Szymanski* v *Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997). We find no clear error here.

An action is frivolous if one of the following conditions is met:

> (i) The party's primary purpose in initiating the action or asserting the defense 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); MSA 27A.2591(3)(a).]

With regard to defendant's defense, he claimed that he never ordered the transcripts prepared by plaintiff and for which she sought payment. Defendant's theory was therefore, that there was no mutual assent contractually binding him to pay for the transcripts. The district court found defendant's defense frivolous under MCL 600.2591(3)(a)(ii); MSA 27A.2591(3)(a)(ii) because there was no reasonable basis for defendant to believe he did not order the transcripts.

Although defendant cites several facts he alleges demonstrate a reasonable basis for him to believe he did not order the transcripts, they do not leave this Court with a definite and firm conviction that the district court erred. First, defendant claims that plaintiff's counsel allegedly sent him a fraudulent collection letter, thus making defendant suspicious of plaintiff's attendant claim that defendant ordered the transcripts. However, there is no evidence of this letter in the record. Defendant also argues that because the transcripts were not helpful to his case in the underlying suit, he reasonably believed that he did not order them. This argument is neither convincing nor supported by the record. As the circuit court noted, this claim is belied by evidence "that for a lengthy period of time he did not remember whether or not he ordered the transcripts, that in telephone conversations with the plaintiff-appellee and others he indicated he thought he paid for the transcripts, that he never denied ordering the transcripts until approximately a year after he received them, that he received the transcripts, that he had no

problem with the accuracy of the transcripts, that he never returned the transcripts or notified the plaintiff-appellee that they were erroneously sent."

Likewise, as the circuit court noted, these facts also demonstrate the validity of the district court's finding that defendant had no reasonable basis for believing the facts underlying his Consumer Protection Act counterclaim. One aspect of defendant's counterclaim centered on MCL 445.903(k); MSA 19.418(k), which prohibits one from falsely representing to a party to whom goods are supplied that the goods are being supplied pursuant to request. The facts cited with regard to defendant's contract defense show that defendant had no reasonable basis for believing that plaintiff falsely represented defendant had ordered the transcripts.

The other aspect of defendant's Consumer Protection Act counterclaim focused on defendant's argument that the act applied because the transcripts were supplied in "trade or commerce." MCL 445.903(1); MSA 19.418(3)(1). The act defines trade or commerce as the conduct of a business that provides goods, property or services, primarily for personal, family or household purposes. MCL 445.902(d); MSA 19.418(2)(d). Although defendant asserted the act applied because the transcripts were provided for personal, family or household purposes – his wife's lawsuit – defendant stated in a letter to plaintiff's attorney that he was acting "in a representative capacity" for the plaintiff in the underlying suit. Thus, although defendant may have been representing his wife in the underlying action, as her admitted legal representative in a lawsuit, the transcripts were provided for business or professional purposes.

Defendant next claims that the district court improperly issued a subpoena for defendant to attend a post-judgment creditor's deposition. Although this Court may properly review an issue not passed on by the lower court if the question is one of law and the facts necessary for its resolution have been presented, the necessary facts for resolution of this issue have not been presented. We therefore decline to address this issue.

Finally, defendant argues that the district court erroneously ordered disposition of a cash bond to plaintiff. Again, defendant failed to provide any of the district court record with regard to this issue. Thus, we also decline to review the claim.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Gary R. McDonald
/s/ Patrick M. Meter