

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH ANNE SMITH,

Plaintiff-Appellee,

v

MATTHEW A. SMITH,

Defendant-Appellant,

and

CHRISTIAN KRUPP II and KRUPP LAW
OFFICE, P.C.,

Appellees.

UNPUBLISHED

June 6, 2000

No. 215072

Kent Circuit Court

LC No. 94-002254-DM

Before: Fitzgerald, P.J., and Bandstra, C.J., and O'Connell, J.

PER CURIAM.

Defendant appeals by leave granted the orders granting summary disposition in favor of plaintiff Elizabeth Anne Smith and appellees Christian Krupp II and Krupp Law Office, P.C., her attorneys, pursuant to MCR 2.116(C)(8) and dismissing his motion for sanctions. We reverse and remand.

The facts of this case, which has previously been before this Court three times, are set forth in *Smith v Smith*, 218 Mich App 727; 555 NW2d 271 (1996) and, therefore, we need only address those facts relevant to this appeal. Plaintiff and the parties' two children moved out of the marital home in Genesee County on September 9, 1994. On September 19, 1994, plaintiff signed the divorce complaint in which she stated that she had resided in Kent County for at least ten days before filing the complaint. Plaintiff's counsel, appellee Christian Krupp II, filed the complaint with the Kent Circuit Court on September 23, 1994.

On October 13, 1994, the court entered a temporary order regarding child support, custody, and visitation. A modified order was entered on November 18, 1994. On March 3, 1995, defendant moved to dismiss the case, arguing that the court lacked jurisdiction under MCL 552.9(1); MSA

25.89(1), because plaintiff was not a resident of Kent County on the filing date or on any of the ten days preceding the filing. In his brief in support of the motion, defendant also requested sanctions under MCR 2.114(E). Defendant noted his position regarding jurisdiction at the opening of virtually every hearing.

While the issue of defendant's jurisdictional motion was pending, defendant refused to pay child support because he was allegedly being denied visitation with the children. On June 21, 1995, the trial court issued a bench warrant authorizing defendant's arrest for nonpayment of child support. On October 16, 1995, the date scheduled for the evidentiary hearing regarding defendant's motion, defendant did not appear. The court stated that a party in contempt of court for failure to obey that court's orders is not in a position to argue through counsel that the case should be dismissed. The court also stated that a party in contempt of court must purge himself of the contempt before being heard by the court. The court never held the evidentiary hearing. Rather, after plaintiff testified that she resided in Kent County for ten days before filing for divorce, the court entered a default judgment of divorce.

Defendant appealed to this court, raising the jurisdictional argument presented to the trial court. This Court, finding that the trial court erred by failing to resolve the jurisdictional dispute, remanded the matter to Kent Circuit Court for an evidentiary hearing regarding jurisdiction.

On remand, plaintiff's counsel submitted a voluntary dismissal that was signed by plaintiff and by the court on December 5, 1996.¹ The order was amended on December 6, 1996, following a hearing. The parties did not address the jurisdictional question at this hearing. However, defendant presented his request for sanctions against plaintiff and appellees. The court declined to rule on defendant's request, noting that an evidentiary hearing would be required.

On August 8, 1997, defendant formally moved for sanctions and costs against plaintiff and appellees. Plaintiff responded to defendant's motion for sanctions by filing a motion for summary disposition pursuant to MCR 2.116(C)(6) or for a continuance pending the outcome of a federal court case filed by defendant. On October 3, 1997, the court² entered an order staying the proceedings regarding defendant's motion for sanctions until resolution of the federal court case. Defendant appealed to this Court. On February 24, 1998, this Court reversed the circuit court order staying defendant's motion for sanctions and ordered that court "to rule on the motion for sanctions forthwith."

On remand, plaintiff and appellees filed motions for summary disposition seeking to have the trial court summarily dismiss defendant's motion for sanctions. Following a hearing on August 3, 1998, the court³ granted the motions on the ground that defendant's request for sanctions was untimely because a request for sanctions was not raised until December 6, 1996.⁴

On appeal, defendant argues that a motion for summary disposition is not an appropriate vehicle to dispose of a motion for sanctions.

A party may move under MCR 2.116 for "dismissal of or judgment on all or part of a claim." MCR 2.116(B)(1). MCR 2.116(B)(1) refers to a "statement of claim" as taking the form of a

“complaint, counterclaim, cross-claim, or third-party complaint.” The plain language of the court rule makes it clear that a motion for summary disposition may be brought only to dismiss a “claim.”

Given the definition of claim, it is clear that a motion for sanctions is not a “claim” subject to summary disposition under MCR 2.116(C)(8). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the pleadings. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In reviewing a motion for summary disposition under MCR 2.116(C)(8), the trial court is required to review the plaintiff’s pleadings, MCR 2.116(G)(5), accept all factual allegations contained in the pleadings as true, and construe them in the light most favorable to the nonmoving party. *Id.* These requirements for reviewing a motion for summary disposition under MCR 2.116(C)(8) would be rendered nugatory in the context of a motion for sanctions. Construction of a court rule should compel a result where every word and phrase has some meaning and no part is rendered surplusage or nugatory. See *Hoste v Shanty Creek Mgmt, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999). Accordingly, we conclude that the trial court erred by addressing defendant’s motion for sanctions in the context of plaintiff’s and appellees’ motions for summary disposition.⁵

Reversed and remanded.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Peter D. O’Connell

¹ This order was signed by Judge Donald A. Johnston.

² This order was signed by Judge Dennis Kolenda, who was reassigned to the case after defendant’s motion for disqualification of Judge Donald Johnston was granted on May 27, 1997.

³ This order was signed by Judge Dennis B. Leiber, who was reassigned to the case due to court reorganization.

⁴ To be timely, a request for sanctions should be filed before the action’s dismissal. *Maryland Casualty Co v Allen*, 221 Mich App 26, 30; 561 NW2d 103 (1997). However, a defendant can comply with that rule by requesting sanctions before dismissal of the action. *Id.* In the present case, defendant requested sanctions in his March 3, 1995, brief in support of his motion to dismiss for lack of jurisdiction.

⁵ In light of our conclusion, we need not address defendant’s alternative argument that, even if summary disposition was the appropriate vehicle by which to decide the merits of defendant’s motion for sanctions, the trial court abused its discretion by finding that defendant’s motion was untimely. We note, however, that the trial court’s factual finding that defendant first requested sanctions on December 6, 1996, is clearly erroneous. The record reflects that defendant first requested sanctions in his March 3, 1995, brief in support of his motion to dismiss.