

STATE OF MICHIGAN
COURT OF APPEALS

HOFFMAN & WARTELL, P.C.,

Plaintiff/Counterdefendant-
Appellee,

v

MARCIE ANN MILLARD,

Defendant/Counterplaintiff/Third-
Party Plaintiff-Appellant,

and

MICHAEL HOFFMAN and DOUGLAS
WARTELL,

Third-Party Defendants-Appellees,

and

KATHLEEN SOLOMON,

Appellant.

Before: Collins, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Appellants Marcie Ann Millard and Kathleen Solomon appeal by delayed leave granted from an order of the trial court imposing sanctions against Millard and Solomon in the amount of \$49,797.95 for filing a frivolous countercomplaint and third-party complaint. We affirm.

Millard had worked as the office manager at plaintiff law firm and was discovered to have embezzled a substantial amount of money from plaintiff's client trust accounts. Plaintiff terminated her employment on July 26, 1996. On August 9, 1996, plaintiff filed a complaint against Millard alleging conversion, fraud and deceit, unjust enrichment, breach of fiduciary duty, and breach of duty of loyalty. On September 12, 1996, Kathleen Solomon, Millard's attorney, filed a countercomplaint on Millard's behalf against plaintiff alleging conversion, fraud and deceit, unjust enrichment, breach of fiduciary duty, breach of duty of loyalty, three counts of

tortious interference with business relationships, intentional infliction of emotional distress, slander of title, wrongful discharge under the Whistleblowers' Protection Act, and abuse of process. In May of 1997, Millard was charged with eight counts of embezzlement, contrary to MCL 750.174(4). On June 19, 1998, a jury convicted Millard of seven counts of embezzlement, and she was sentenced on July 14, 1998 as a habitual offender to 4 ½ to 15 years of imprisonment.

On September 30, 1998, the trial court granted plaintiff's motion for summary disposition on its complaint, and granted summary disposition for plaintiff and third-party defendants on Millard's countercomplaint and third-party complaint. The trial court further granted sanctions to plaintiff and third-party defendants under MCL 600.2591, and required plaintiff and third-party defendants to submit a bill of costs and attorney fees. Solomon, represented by an attorney, moved for reconsideration since the sanctions were entered against her and Millard for filing a frivolous countercomplaint. Although the trial court denied the motion for reconsideration, it required plaintiff to review the billings and determine what costs and fees related solely to Millard's countercomplaint. Plaintiff again submitted its bill of costs and fees, and reduced the amount requested in attorney fees from \$68,000 to \$42,675 and requested costs in the amount of \$7,122.95. The trial court ruled that the amount plaintiff requested was reasonable and awarded a total of \$49,797.95 in sanctions to plaintiff.

On appeal, appellants Millard and Solomon first argue that the trial court clearly erred in determining that Millard's countercomplaint was frivolous. We review the trial court's finding that a claim was frivolous under the clearly erroneous standard of review. *In re Attorney Fees and Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999). MCL 600.2591 defines frivolous as:

(a) "Frivolous" means that at least 1 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.

We find that the trial court did not clearly err in determining that the countercomplaint was frivolous. Here, it is unassailable that Millard lacked standing to even allege the first five counts of the countercomplaint, which essentially involved claims that plaintiff and third-party defendants wrongfully took money from their clients. Further, the remaining seven counts show that the essential elements are lacking on the face of the countercomplaint; therefore, the remaining counts appear to have been alleged merely to harass, embarrass, or injure plaintiff. Indeed, with regard to the remaining seven counts, there is a general lack of identifying with specificity any facts supporting the claims. Moreover, with regard to all twelve counts of the countercomplaint, it is clear that Millard's legal positions were devoid of arguable legal merit.

Accordingly, the trial court did not clearly err in finding that Millard's countercomplaint was frivolous so as to award sanctions under MCL 600.2591.

Appellants also contend that the trial court abused its discretion by awarding excessive costs and fees. Here, after hearing Solomon's motion for reconsideration, the trial court required plaintiff to review and resubmit its bill of costs and fees. On resubmission, the amount of attorney fees submitted was about \$25,000 less than originally requested. More specifically, plaintiff's resubmitted bill of costs deleted any time for services related to the criminal case, another civil case related to this matter, and all time billed for clerks and paralegals. Plaintiff requested reimbursement for 284.5 hours at the rate of \$150 an hour. The trial court found that the amount requested was reasonable.

Under these circumstances, we find no abuse of discretion in the trial court's determination that the amount of costs and fees was reasonable. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; NW2d (1999); *In re Attorney Fees and Costs*, *supra* at 704-705.

Affirmed.

/s/ Jeffrey G. Collins
/s/ William B. Murphy
/s/ Kathleen Jansen